

1487. 188. 30.
THE

NATURE and OBLIGATION
OF

O A T H S

E X P L A I N E D :

O R, A

P R E S E R V A T I V E

A G A I N S T

P E R J U R Y, P O P E R Y, T R E A S O N, and
R E B E L L I O N.

B E I N G,

A C O U R S E of L E C T U R E S

Read in the DIVINITY-SCHOOL, at OXFORD, in the
Year 1646, by Dr. ROBERT SANDERSON, then *Re-*
gius-Professor of DIVINITY in that UNIVERSITY,
and afterwards Lord Bishop of LINCOLN.

W H E R E I N,

Various DIFFICULT and IMPORTANT CASES of CON-
SCIENCE, not only with Regard to RELIGION, but
CIVIL GOVERNMENT, are Fairly Stated, Learnedly Dis-
cussed, and Judiciously Resolved.

Translated into *English* from the *Original Latin*, and illustrated with
NOTES, from GROTIUS, PUFFENDORF, BARBEYRAC, LE
PLACETTE, BURLAMAQUI, and other Learned WRITERS.

B Y

The Revd. THOMAS DAWSON, L. L. D.
Translator of The ORATIONS of *Eschines* and *Demosthenes*,
concerning THE CROWN.

D U B L I N :

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M DCC LV.





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TO HIS EXCELLENCY

WILLIAM

Marquis of HARTINGTON,

**LORD LIEUTENANT-GENERAL, and GE-
NERAL GOVERNOUR of IRELAND.**

May it please Your EXCELLENCY,

THE Request of *that Great and
Good Prelate and Patriot* the
most Reverend Doctor *Boulter*,
when Lord Arch-Bishop of *Armagh*,
and Primate of *all Ireland*, engaged me
to undertake the following *Translation*
of the Celebrated *Treatise* of the Learn-
ed and Judicious *Bishop Sander son*, con-
cerning

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cerning the *Nature* and *Obligation* of *Oaths*: And, had not the *peculiar* Usefulness of *such* a Performance at the *present* Conjunction, as well as the Great Importance of the Subject at *all* Times, been irresistible Motives to make it Public, it would for ever have lain buried in Darkness. But, when I had *once* determined to Publish it to the World; Had I never been under the *least* Obligation to any of Your Noble *Ancestors*, it was easy also for me to determine, to whom I should Address it; tho', I must confess, I much *more* dread Your *Excellency's* Censure than *That* of the Rest of Mankind.

HOWEVER; I was willing to believe, That, a *Treatise* of *this* kind, wherein many *Important* and *Knotty Cases* of *Conscience* were *judiciously* resolved by a *Great* and *Learned Casuist*, would not be *altogether despised* by One, though never *so learned* and *skilful* in *such* Matters *Himself*. I was willing to believe,
That,

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That, a *Treatise*, which sets in a *true* Light the *Nature* and *Obligation* of the *strongest* and *most Sacred Tie* of all *human* Societies; and which, if *duly* regarded, *must* be of *infinite* Service to their Happiness and Welfare, could *not* be *disagreeable* to “ a *Statesman*. And, as a *great* Part of it, if *duly* considered, may also serve to *recover* some *deluded* factious and rebellious Subjects to their Duty, and to a *solemn Sense* of *Obedience* to their *lawful* Sovereign, as well as to *quiet* some People’s Minds with regard to our *present* Happy Settlement both in *Church* and *State*, I could not suppose it to be *unacceptable* to “ a *Patriot*.”—To whom, therefore, could I *so properly* Address *this* Essay, as to His *Excellency* the *Marquiss of Hartington*, who is well known to possess *these* Characters in the *most* eminent Degree? To *One*, who has been called, at so *early* an Age, by a *Great* and *Wise* King, to some of the *most exalted* and

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important Stations in his Dominions, when Few, *very few* of *more* advanced Years, could fill them with so much Honour, Dignity, Prudence, and Success.

It is asserted by some *judicious* Writers, "That, Glory founded upon honourable Designs and Actions can never be subject to Diminution; nor, can any Attempts prevail against it, but in the Proportion which the narrow Circuit of *Rumour* bears to the unlimited Extent of *Fame*." And, if so, it is easy to foresee, the *early* generous Designs and Actions of Your Excellency will not only render Your Character shining and conspicuous, in Spite of Envy and Malevolence, during the *present* Age, in *these* Kingdoms; but, will also transmit it, with Honour and Applause, to *far-distant* Nations, and Generations unborn.

WELL-

DEDICATION. vii

WELL-GROUNDED Praise is *justly* deemed and allowed to be, not only a *Spur* and *Incentive* to *great* and *generous* Actions; but also, *One* of the *greatest* *Rewards* of *Virtue* in the *present* Life; and therefore, the *most rigid* *Censor* of *Morals* should *not* be *afraid* to *bestow*; nor the *Highest* and *most Modest* in the *World* *disdain*, or *refuse*, to *accept* of it.—Yet, as I am very sensible, that, by saying what *every* one must allow to be *true*, I am offering *Violence* to the *Modesty* of One who is as solicitous to *avoid* all Public Applause, as he has been assiduous to *deserve* it upon every Occasion in those exalted Stations thro' which he has hitherto passed; I shall only take Leave to say, “ That, while
 “ great Abilities; undoubted Integrity;
 “ a firm Attachment to our Happy
 “ Constitution both in *Church* and
 “ *State* upon the glorious Principles of
 “ the late *Happy Revolution*; a Zeal
 “ for the Liberty of Mankind, and the

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“ Good of this Kingdom in *particu-*
“ *lar*; while Moderation in a High
“ Fortune; Humanity; Affability; and
“ a General Politeness of Manners, con-
“ tinue to be deemed *Extraordinary*
“ Qualities, or *Valuable* Distinctions
“ either in *Public* or *Private* Life;
“ Your *Excellency* must always be
“ *greatly* disappointed, if you expect,
“ Your Character will *not* be admired
“ and celebrated by *all* true Lovers of
“ *Public* and *Private* Virtue.” I have,
therefore, no Occasion to enter into a
Detail of the great and glorious Actions
of Many of Your *Excellency*’s illustrious
Ancestors recorded in the *English* An-
nals—No; A *Noble* Soul despises, and
a *Generous* Heart scorns to offer *bor-*
rowed Incense.

—*Virtue alone is true Nobility.*

PERMIT me *only* to add, That, You
may *long* serve our Most Excellent King
and *these* Kingdoms with those great
Talents

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Talents, of which You are so happily possessed.—And, whensoever the Great Disposer of all Things shall be pleased to remove You from *this* transient Scene on Earth; That, HE may place You in the *Highest* Mansion of *That* Bliss and Immortality, which is prepared for great Statesmen, excellent Patriots, and good Men, shall be the *constant* and *ardent* Prayer of,

MY LORD,

Your EXCELLENCY'S

most dutiful,

most faithful,

and most obedient,

humble Servant,

TALLOW in the County
of WATERFORD, Ne-
vember 5th, 1755.

Tho. Dawson.

THE
TRANSLATOR'S
ADVERTISEMENT
TO THE
READER.

IT seems somewhat surprizing, That, among *all our modern Translations from the Greek and Latin Originals into English*, no One has attempted to translate the *Lectures* of that learned Prelate *Doctor Sanderson*, which are allowed by the *best Judges* to be, in the *General*, the most excellent and useful *Treatise* now extant, in *any Language*, upon the *Nature and Obligation of Oaths*: So Excellent, That, it has *often been judiciously recommended to, and frequently read by, the Students in our Universities*, in order to give them *true and early Notions of*
a Sub-

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a Subject, not only interesting to *human Society*, but extremely useful to *every particular Person* in the *future Conduct* of his *Life*.

THE *present* Translator never saw any Translation of these Lectures but One, and That long after he had finished his own, of which one Mr. *Lewis* was the *Editor* several Years ago in *London*; and, which he believed to have been made by his Majesty *King Charles the First*, during his Captivity in the *Isle of Wight*; or, at least, to have been *revised and approved under his Majesty's own Hand* for the *Benefit and Conviction* of his *perjured Subjects*. Had Mr. *Lewis* himself translated these Lectures, or corrected that *supposed Translation* of them, it is more than probable, no other Person would have had occasion to undertake a *new Translation* of them. But, whether it was his Majesty or *not*, that attempted that Translation, certain it is, that, it is full of *material Imperfections*; many *entire Sentences* of the *Original*, as well as *Quotations*, being therein omitted; the *Sense* of the *Author* and his *Authorities*, especially from the *Greek Writers*, in a great Number of Passages, *misunderstood*; the *Thread* of his Reasonings so often *interrupted*, and *broken*; and, the *Language*, throughout the Whole, *so obsolete, perplexed*, and full of *Latin Technical Terms*, that, however it might have been esteemed *an hundred Years ago*,
it

it is certain, it cannot, at *this* Day, be read, either with much Pleasure, or Profit. A *New* Translation, therefore, of *this* valuable Treatise is attempted, wherein *every* Sentence and Quotation of the *Original* are faithfully retained and inserted; all *Technical* Terms, as much as can conveniently be done in *Scholastic* and *Casistical* Matters, explained, and made easy; and, the *Sense* and *Reasonings* of the *Author* rendered as intelligible, coherent, and clear, as the *Translator* possibly could, and the *Nature* of the Subject would admit, in order to accommodate it to the Understandings of the *Bulk* of Mankind for whom it is intended.

MEN of *Learning* and of *Leisure* generally chuse to read *This*, and every *other* Treatise of the *like* Nature in the *Original* Languages, wherein they were written by their respective Authors: For those, therefore, *this* Translation is not calculated. But, if it should be found *Useful* to such as are *Unlearned*, and have *some Leisure* and *Inclination* to receive Information on *this* important but difficult Subject, the *End* of the *Translator* will be abundantly attained, who, with *this* View, has endeavoured to *illustrate* several *obscure* Passages with, perhaps, some useful *Notes*; and, in some *controverted Cases* has, as *succinctly* as he could, laid before the Reader the *different Opinions* of some of the *Best Writers*,
and

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and left him to judge for *himself*, without presuming to set down his own. And, though he does not pretend, that *this* Translation is free from *all* Errors or Mistakes, (for, what Translation is so?) yet, he hopes, upon a *candid* Perusal, many *material* Ones will not be found in it. If there should, it would give him *singular* Pleasure to be set right therein, in order to *amend* them in some future Edition, if *this* Translation should be thought worthy of it; or, to excite any Man of a *clearer* Head and *better* Pen to do the great *Author* Justice, and thereby promote the *Good* of Mankind.

BUT, Here it will perhaps, be asked, “What *Necessity* is there for the *Publication* of *such* a *Performance* at *this* *Conjuncture*?” The Answer is obvious.

WHEN the *Nature*, *Dignity*, and *sacred* *Obligation* of an *Oath* seem to be *little* considered, understood, or regarded, by the *Generality* of Men. When the *Jesuits*, and other *Factors* for *Rome*, labour with the utmost *Diligence* to persuade *us*, as well as *their* hood-winked *Votaries*, “That, *Diffimulation* and *Fraud*, *Equivocations* and *mental Reservations* in *Oaths*, are *harmless*, *defensible*, and *allowable* Things.” When They labour, with *uncommon* Application, to persuade, that, “*Oaths of Allegiance* to our right-
ful

“ *ful and lawful King* may be *dispensed with*,
 “ and *annulled* by the *Pope*, or, his *Delegates*.”
 When *They* inculcate, That, “ *No Faith is to*
 “ *kept with Hereticks*.” When *Perjury*, in
 consequence of *such* pernicious and dangerous
 Doctrines, is too often seen to *reign* in our *Courts*
 of *Law* and *Justice*; and thereby, the *Lives*, *Li-*
berties, and *Properties* of many of the *best* *Sub-*
jects, either endangered, or iniquitously taken a-
 way. And, when *causeless Swearing* in *Con-*
versation, whereby the *Majesty* of *God* is impi-
 ously prophaned; *Faith* and *Confidence* lessened
 among *Men*; and their *immortal Souls* exposed
 to *Ruin* and *Destruction*, is become the *common*
Practice of almost *all Ranks* and *Degrees* of *Man-*
kind. When, I say, *All* these are *Facts*, too no-
 toriously known to be denied or disproved, and
justly made *Matters of Complaint* by *all good*
Men, who dread the *Effects*, which *this Liberty*,
 or rather, *Licentiousness*, if suffered to go on, may
 have on *Government*, as well as *Religion*; I pre-
 sume, it will not be judged *impertinent*, but rather
commendable in a *Protestant Clergyman* to turn
 his *Thoughts* to *this* important, but greatly-ne-
 glected *Subject*. For, is it not confessedly his *Du-*
ty, and ought it not to be his *Endeavour*, to the
utmost of his *Power*, to restore the *Use* of an *Oath*
 to it's *just Veneration*? to bring *Men*, if possible,
 to a *more sacred Esteem* thereof? to preserve the
People from the *Infection* of *corrupt Principles*?
 to

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to promote *Loyalty* to his *lawful* Sovereign; the public Good of his Country; and the Salvation of *all* Mankind? And, if so—What can be *more* effectual to obtain *such valuable Ends* than to *publish a Translation*, (however weakly executed), of the *Celebrated Lectures* of *this Great and Learned Bishop's Lectures*, wherein, not only the before-mentioned *dangerous* and *pernicious Doctrines*, with many others of the like Nature and Tendency, are *solidly* refuted; and which, therefore, may be *justly* called, “*A Preservative a-*
“*gainst Perjury, Popery, Treason, and Rebel-*
“*lion;*” but also, wherein a great Number of *other Cases*, useful to be known by *every Man* in the *common Commerce* of Life, are *learnedly* discussed, and *judiciously* resolved; and therefore, may also be called, “*The Christian's Directory in the most important private Cases of Conscience;* I say, I presume, that, an *Attempt* to *translate* such *Lectures* will not only be thought *excusable*; but the *Publication* of them found *seasonable* and *Beneficial* to such as shall please to peruse them with *Candour* and *Attention*. And, *This*, I believe, will be allowed, by all *Well-wishers* of our *most excellent King* and *Constitution*, to be an *Apology* sufficient for laying the *following Essay* before the *Public* at *this critical Conjunction*, when the *Kingdom* openly abounds with *Jesuits, Friars*, and other dangerous *Emissaries* of *France* and *Rome*.

T H E

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The FIRST LECTURE concerning the NATURE and OBLIGATION of an OATH.

NUMB. 30th Chap. and 2d Verse.

*"If a Man vow a Vow unto the Lord, or swear
" an Oath to bind his Soul with a Bond; He
" shall not break his Word; He shall do ac-
" cording to all that proceedeth out of his
" Mouth."*

1. **A** Proposal of all that is to be handled in
this Treatise.
2. Of the Definition of an Oath.
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doubtful."
6. That, the End of an Oath, is, "Faith, or
Belief."

A

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11. That, an Oath ought not to be taken without Necessity.
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13. That, an Oath ought not to be taken with a doubting Conscience.





THE
Nature and Obligation
OF
OATHS
EXPLAINED.

NUMB. Ch. xxx. Ver. 2.
*If a Man vow a Vow unto the Lord, or swear
an Oath to bind his Soul with a Bond; He shall
not break his Word; He shall do according to
all that proceedeth out of his Mouth.*

I. **I** imagine, I shall dispatch what I have to offer on this Subject with the greater Brevity, as well as with greater Benefit and Advantage to you, my Auditors; if now, in my very first Entrance upon it, I depicture, or lay before you, as it were, a *general Sketch* of the whole insuing Treatise. For, hereby, ye will not only the better comprehend the Design of my *Institute*; but, I shall be able to fix *certain Limits* to my Discourse; or, at least, to restrain it within due Bounds: Or, in Case, it should, at any
B Time,

Time, happen to grow somewhat too redundant, and exceed them; hereby, shall I be-enabled to prevent it's wandering too widely from the Purpose, as well as seasonably and speedily reduce it to Order and Method, and bring it again to the proper Points. I shall, therefore, endeavour to dispatch the *whole* Matter under these *Three* Heads.

1st. To the End, that the Subject in Hand may be the more clearly understood, I shall shew, what, *an Oath*, in *general*, is; what, a *promissory Oath*, in *particular*; and likewise, wherein the *Nature of an Obligation* consists.

Then, 2dly, Since we must form our *Determinations* concerning Things *uncertain* from *such* as are *certain*, I shall propose certain *Axioms* or *Presumptions*, that is, *general Rules* drawn from the Fountain of *natural Right*, and allowed by the *common Consent* of all Nations, as *Hypotheses*, and *Criteria* or *Tests* of the ensuing Inquiry; from which, the *Decisions* of *particular Cases*, (as *Conclusions* from *Principles*, in which they are *virtually* contained), are to be drawn; and, to which they are to be reduced, as to their proper *Rules* and *Canons*.

These *two* Things being necessarily premised, of which, the One, will shed great Light upon; and the other, strongly corroborate and confirm *what* shall be hereafter delivered; I shall, then,

In



In the *third* Place, proceed to the *Solution* of those *Doubts*, which, either contain in them some *Difficulty* that requires *Explication*; or, that appear to raise *Scruples* in the *Minds* and *Consciences* of good and pious Men. And, since *this* will be the *Principal*; and, by far, the *most copious*, Part of the whole Work, I shall endeavour to reduce *all* the *various Cases* to certain *Classes*; and *that*, so far as relates to the *Bond* of an *Obligation*, pursuant to *these four Kinds* of *Causes*, namely, *the Material, Formal, Efficient, and Final*; and, shall refer those Things to the End of the Work, which relate to the *Solution* of *that Bond* or *Obligation*, as well as *any other Thing* that I shall find, either to have been omitted in it's proper Place; or, that I shall judge, in any other Respect, profitable to be added for the *Conduct* of *Life*, and the *Information* of *Conscience*.

2. Having thus, delineated, as it were, in a *Map*; or, given you a *general Sketch* of the whole ensuing Treatise; I *shall now* proceed to the *Matter itself*. And, the *First Thing* that occurs *here* to be explained, is, what an *Oath*, in *general*, is. I shall not *here* enter into a Contest with any Man that would rather call an *Oath* by the Name of *Jusjurandum*, than *Juramentum*; or, by any *other Appellation*. Nor, is there any Necessity for my taking Pains, *nicely* to examine into the Force and Origin of any *Latin, Greek,*

or Hebrew Word upon this Head; nor, into the Equivocalness of Terms, Identity of Signification, or Likeness of Denomination. For, the wicked Custom of Swearing that so universally prevails, and the too familiar Abuse of so very sacred a Thing in the profane Age wherein we live, render the meaning of the Word so well known, that no Man; no, not a Child, can be ignorant of it. However, Authors have variously, (as it often happens), defined it, according to their various Dispositions. That Definition of Cicero is the briefest. (a) An Oath, says he, is a religious Affirmation. And here, (to mention it only by the Bye), I cannot forbear wondering at, and even being angry with, those petulant young Gentlemen of the present Age, who, actuated I know not by what erroneous Prejudice, though certainly to their own great Detriment, condemn and explode Cicero for being too prolix a Writer. —But, not to digress. Should any one desire a fuller Definition of an Oath, let him take this: (1)

(a) Cicero de Offic. L. 3. Cap. 29.

(1) Puffendorf defines an Oath to be, “a religious Asseveration, by which we either renounce the Mercy, or imprecate the Vengeance of Heaven, if we speak not the Truth.” That, this is the Sense and Purport of Oaths, appears from those Forms of Words in which they are commonly expressed, as, “So help me God; God be my Witness; God be my Avenger,” and other equivalent Terms, which amount to much the same. For, when a Superior, who hath a Right of punishing, is appealed to, as a Witness, his Vengeance is likewise invoked in Case of Breach of Faith; and God, who knows all Things, being ever a Witness, is ever an Avenger.

(Law of Nature and Nat. B. 4. C. 2.)

Others

" *An Oath is a religious Act, in which God is invoked as a Witness, for the Confirmation of a doubtful*

Others define an *Oath* to be "a solemn Appeal to the Divine Being concerning the Truth of any Proposition advanced. By it we call Almighty God to attest the Truth of what we assert; and imprecate his Vengeance, in Case we prevaricate, conceal, or pervert the Truth.

As to the *Origine* and *first Source* of *Oaths*, the ingenious and learned Dr. *Warburton* tells us, "The Progress and Increase of mutual Violence in the *State of Nature*, till it became general and intolerable, were owing to the natural Equality of Power amongst Men. The Remedy of which was, *Civil Society*. But, That Equality of Power which occasioned the Evil, prevented the Remedy, any otherwise, than by the *Will* and *free Consent* of every One. The Entrance, therefore, into *Society*, was, by free Convention and Stipulation. But then again, that same Equality, which made every Man's Consent necessary, prevented his giving any other Security for the Performance of his Compact than his mere Word: And how feeble a Security that is, we all know. Some Means, therefore, were to be contrived to strengthen the Obligation of his Word. Now, nothing, in the Case here imagined of perfect Equality, (and such was the Case on entering into *Society*), could give this Strength, but Religion.

An *Oath*, then, made upon these three great Principles, namely, The Being of a God,—His Providence over human Affairs,—and, the natural essential Difference of moral Good and Evil, was that Sanction to his Word, which was universally employed in all Conventions.—For, an *Oath* is an Invocation to Heaven, whose Providence is believed to regard Men's Actions; Justice being the Object of his Delight, and Injustice of his Displeasure; and, that he will punish and reward accordingly; all which necessarily imply an essential Difference between Good and Evil, prior to human Decrees." Thus an old *Grecian Sage* quoted by *Clement*, (*Stram. L. 1.*) speaking of the Office of the ancient Lawgiver, says, He first of all trained the Race of Mankind to Justice, by the Invention of an *Oath*: From hence we may collect, how pernicious it would be to *Society*, to multiply the Use of *Oaths* to inferior Purposes. For, if the Sanction of an *Oath* be the great fundamental Cement of *Civil Society*; and, the multiplying them

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"*doubtful Matter.*" I shall beg leave to explain every Member or Clause of *this* Definition, separately, and apart.

3. I said, First, That, it was a *religious Act*. Here the *Act* is put in the Place of the *Genus* (2) or general Idea. For, tho' an *Oath* properly belongs to the *Predicament*, or Head of *Relation*; yet, because that *relative Respect* which is in an *Oath* is founded in the Action of the Person swearing, it is, therefore, not impertinently defined by such an *Act*; forasmuch, as in defining *Relatives*, either the *Matter* or *Foundation* of that *Relation*

"unavoidably dissolve, as it is clear it does, all their Force and Efficacy, such mistaken *Etics* must prove very fatal to Communities. Hence too we may see, it would be as *bad Policy*, in a contrary Extreme, to *dispense* with the *Religion* of an *Oath* in Matters of highest Moment, out of Indulgence to tender Consciences. But, that which shews such Indulgence to be pernicious to *Society*, shews the claim to it to be vain and ill founded; there being no Exemption on Pretence of Conscience from the *fundamental Usages* of *Society*. And, for *Politicians*, to let one Part of their Fellow-Citizens loose from the *Religion* of an *Oath*, and to tie up the rest so closely by it, looks as if they had the *same* Notion of the *moral* World, that certain Philosophers have of the *Natural*; and that, the *Quantum* of *Oaths* in *Society*, was like the *Quantity* of *Motion* in the *Universe*, always to be kept the *same*; and, a *Want* in one Place to be made up by an *Abundance* in another. (*The Alliance between Church and State*. B. 1. Ch. 4.)

(2) A *general Idea* is called, by the Schools, a *Genus*; and it is one common Nature agreeing to several other common Natures. So, *Animal* is a *Genus*, because it agrees to *Horse*, *Lion*, *Whale*, *Butterfly*, which are also common Ideas; so, *Fish* is a *Genus*, because it agrees to *Trout*, *Herring*, *Crab*, which are common Natures also.

Relation is, for the most part, used, instead of the *Genus*. Now, that, it is a *religious Act*, appears, First, from the *Authority* of the *sacred Scripture*. For, in the 6th Chap. of *Deuteronomy* and 13th Verse, *Moses* thus addresses the People of *Israel*, *Thou shalt fear the Lord thy God, and serve him, and shalt swear by his Name*. From which Passage, all the *Schoolmen*, with one Voice, conclude, that, an *Oath* is an Act of the (b) *Worship*, called by them, *Cultus Latriæ*, that is, of that *sacred Worship* which is due to God alone. Secondly, It appears from the *Consent* of all Nations and People, among which, as if

(b) V. Aquin. 2. 2. Qu. 89. 4.

(b) The *Papists* say, there are *several Degrees* of *religious Worship*; *Δαδία*, the highest, due to God alone; *δεδία*, an inferior Kind, due to ordinary Saints and Angels; and, *ἐκρίδία*, due to the *Virgin Mary*. But, this is an arbitrary, *unscriptural Division* of *religious Worship*. For, not to insist, that, *Δαδία* and *δεδία* signify the same Thing, *promiscuously*, in *Scripture*; there can be no such Distinction in *religious Worship*, as an *higher* and *lower Kind*; because, whatever is *religious Worship*, is such, with respect to God only as the *Object*, and therefore, can be but one, and that in the *highest Degree*, as God is one, and infinitely exalted above all. Religion, say the *Schoolmen*, is a *moral Virtue*, which exhibits due *Worship* to God, as the *Principle* of all Things. *Lactantius* *, therefore, derives it, a *Religando*, because, it ties Man to God; and *St. Austin*, a *Religendo*, because, Men *chuse* God again, whom they had forsaken: It is not, therefore, whatsoever is excellent, but whatsoever is *divine*; and, as it is *divine*, that is the *Object* of Religion. Now, *Angels* and *holy Men*, although there be some kind of Honour due to those Excellencies that are found in them; an Honour, commensurate to those Excellencies: Yet, falling infinitely short of *Divinity*, must be excluded from having any Share of that *Worship*, which, either by God himself, or the *universal Consent* of Mankind, is made *Religious*, that is, appropriated to God.

* L. 4. Inst. c. 28. de ver. Relig. c. 55.

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guided only by the same Light of Nature; the Religion of an Oath was always deemed so very sacred, that, we find the Words, *Sanctity* and *Religion*, with other the like Appellations, not used so frequently upon any other Subject by the *Heathen* Writers, as upon this of *Oaths*. For, though they had many Things, which they accounted sacred; yet, an Oath alone retained the Name of (4) *Sacramentum* or *Sacrament*, by a peculiar kind of Right, for no other Reason than that, among so many sacred Things, it was, in some sort, the most sacred of them all; whence, that Term flowed afterwards into the *Christian* Church, and spread therein, from some *Likeness* it bore to the (c) *military* Oath of the *Romans*, called also *Sacramentum*; yet so, as likewise to signify certain other Things, that in Process of Time came to be used therein. And, the *French* at this Day do, making an Abatement only for their Manner of Pronunciation, call an Oath, from the *Latin* Word *Sacramentum*, *un Serement*. Thirdly, It appears

(c) *Ὀρκος, ῥησιδωκεος*. *Dion. Halicar. L. 6. Primum Militie Vinculum est Religio. Sen. Epist. 9.*

(4) *Sacramentum*, in the general, denotes "the Sign of a holy, or sacred Thing." The Word, in the *Original*, signifies an Oath, particularly that which the *Roman* Soldiers took, to be true to their Commanders; the Words whereof, according to *Polybius*, were, "Obtemperaturus sum & facturus quicquid mandabitur imperatoribus, juxta Vires." In the *Roman Law*, it was used for a Pledge or Gage of Money, which both the Plaintiff and Defendant, in a real Action, laid down in Court, to be forfeited by him who should lose the Cause. This was particularly called, *Sacramentum provocare, rogare, stipulari, &c.* This is not the Sense here alluded to., but the former.

very clearly from *natural Reason*; because, an *Oath* tends to the *Honour* of the *Deity*, by acknowledging his *Truth*, *Knowledge*, *Justice*, and *divine Power*. For, though an *Oath*, taken falsely, lightly, rashly, or otherwise unduly, betrays, on the *Part* of the *Person* swearing, a certain *Irreverence*, or rather *Contempt* of *God*, and savours too much of *Atheism*; yet, the *Act* itself of *swearing* does, in its own *Nature*, include a *Reverence* of the *Divine Name*. For, since every *Oath* is used for the *Confirmation* of what is affirmed by the *Swearer*; and, since every *Confirmation* ought to be founded on something more certain, and of greater *Authority* than itself, (whence says the *Apostle*, in the 6th Chap. and 16th Verse to the *Hebrews*; For, *Men verily swear by the greater*); it is evident, that he who swears, does, by the very *Act*, acknowledge *God* to be his *Superior*, and to be a *Witness* of the greatest *Authority*; to be a *Witness* of infallible *Veracity*; the *Knower* and *Searcher* of the *Heart*; and a most just, and powerful *Avenger* of *all* *Perjury* and *Falsehood*; from whence it clearly follows, that, an *Oath* is an *Act of Religion*.

4. I said, Secondly, *In which God is invoked as a Witness*. Where, three Things are to be considered, namely, That *God* is brought in; and, as a *Witness*; and that, by way of *Invocation*. 1st, (d) *God is called upon in every Oath*. For,

(d) Hieron. Epistol. ad. Nazianz. in Defin. Jurament. Domini. Erod. xxii. 11.

though

though it was customary in former Times among Heathens, Jews, and Christians, either to swear by *Creatures*; or, at least, in swearing, to name *Creatures only*, without mentioning the Name of God; as might be proved, if necessary, by infinite Testimonies taken from the *sacred Scriptures*, as well as from other *Writings*; (but, whether, and how far, either of these Practices may be lawful, is *not* our Business at present to discuss); yet, in every *Oath*, that is indeed *properly* and *formally* an *Oath*, the Testimony of God is, either *explicitely*, or at least *implicitely*, made use of. For, he who swears by *Idols*, which, in *Reality*, are (e) *nothing*, and (f) *no Gods*, swears by those Things which he *thinks* to be *Gods*; and, he who swears by (g) any *Creature*, does it, in some sort, in order, and with Reference to, *God*;

(e) 1 Corin. viii. 4.

(f) Jerem. ix. 1.

(g) *Puffendorf* observes, That, since God alone is of infinite Knowledge, and of infinite Power, the Absurdity is manifest of *swearing* by any Thing, which we do not look upon as *Divine*; in such a Sense as to invoke it for a *Witness* of our Speech, and for an *Avenger* of our Perjury. Hence, as it was usual for the *Heathens* to swear by the *Stars*, because, they judged them to be so many *Deities*; so, for a *Christian* to imitate them in that Practice, would be a Mixture of Impiety and Folly. As to those *Forms* attributed to some of the Antients, as that of *Socrates*, by a *Dog*, by a *Goose*, (whatever *Porphyry* pretends to the contrary), and by a *Plane-Tree*; that of *Zeno*, by a *Caper*; and that of others, by *Crambe*, we are to esteem merely *jocular*. They swore by these, as *Apollonius*, *Not as by Gods, but to avoid swearing by the Gods*; when by the Practice of the Generality of Men it was grown into an ill Custom, to apply Oaths as the *supplemental* Ornament of Speech.

But,

God; because, he calls upon the Creature to bear witness; as if it were indued with somewhat of the Deity; that is, with somewhat, in which the Truth,

But, that which was most in Use by the Antients, was, to swear by those Things, which each Person held most dear, or set uppermost in his Veneration and Esteem. So *Ascanius* in *Virgil*,

Per caput hoc Juro, per quod pater ante solebat;

By this my Head; my Father's Oath, before.

So, we every-where read of Persons swearing by their own Life and Soul; and by the Life and Soul of those Friends, who stood first in their Affections. And, the Lovers thought themselves very Religious in swearing, "by the bright Eyes, the sweet Lips, the golden Tresses of their Mistress." All which Speeches are, by no means, to be interpreted in this Sense; either that, those Things were invoked, as Witnesses and Avengers of Falsehood, as *Apuleius*, amongst others, believed; or that, they were cited to give Testimony under the Notion of belonging to God, and expressing somewhat of the Divinity, namely his Truth, Goodness, and Power, and which the Person thus swearing hereby acknowledgeth that he enjoys by God's Mercy, and that he is unwilling to lose by God's Justice; as if I should say, *I swear by my Life, that is, by God to whom I owe my Life*; which is the Opinion of Many, and particularly of *Bishop Sanderfon*. But, they only thus invoked God himself, desiring, that if they swore falsely, he would be pleased to punish their Crime in those Things especially, for which they were most nearly and tenderly concerned. Thus, it was the ordinary Custom of the *Athenians*, in their solemn Oaths, to devote themselves and their Family to Destruction, if they deceived; and, on the contrary, to beg all Happiness from the God's on themselves and Friends, if they swore truly; as is evident from frequent Instances in *Demosthenes*. And, they firmly believed, that the Violation of such Engagements would draw down the Anger of Heaven upon the Heads of others, as well as upon their own. — Hence we may gather the Meaning and Design of those Oaths, which were heretofore made, by the Life, the Genius, the Safety of Princes; which, we are told, are still customary amongst the *Persians*, and are esteemed more strict and sacred, than those in which the Name of God is immediately invoked. For, they did this, not as thinking, there was any Divinity in their Princes whilst alive, nor as imprecating their Displeasure if they spoke false; but, because,

many

Truth, Goodness, and Power of God shine forth; and, which he acknowledges, he not only enjoys through the Mercy of God: but, would also be unwilling

many of them, either in good Earnest; or at least, in Flattery, intended hereby to shew, that they preferred their Prince's Safety to their own; and therefore, looked upon it, as a *more* horrid Perjury, to devolve the Wrath of God upon *him*, than upon *themselves*. So that, the Sense of these *Professions* was properly this; *So may my Prince, be happy and safe, as I perform what I now promise, that is, unless I fulfill my Engagement, I desire the divine Judgments may light upon my Prince's Head, &c.* — And again, from what has been offered, it is clear, that *Excerations*, although strictly taken; as, when a Man barely lays Curses, or imprecates Mischief on himself or others, they are *not* Oaths; yet, are, on all Accounts, to be reckoned *Part* of an Oath, as they respect any Assertion or Promise, which they are added to bind. And, *this* is to be extended likewise to those *Prayers* or *Wishes*, by which a Man makes the Performance of his Oath the Condition of his obtaining *such*, or *such* a Blessing. *&c.* — And, hence too it appears, what Interpretation we ought to put on *those* Oaths which we meet with in *Scripture*, when even good and pious Men swear by some created Thing. That, amongst the *Jews* of the latter Ages, nothing was *more* common than Oaths, *By the Head, by the Heaven, by the Earth, by the Temple, by the Gold of the Temple, by the Altar, by the Gift upon the Altar*, is evident from *St. Mat. Chap. xxiii. V. 16. &c.* Where our Saviour reproves them severely for their prophane *Abuses*, and impertinent *Cavils* in this Matter, *&c.* — And, says the same Author, “That Part of the Form in *Oaths*, under which
“ God is invoked as a *Witness*, or as an *Avenger*, is to be accommodated to the *religious* Persuasion which the *Swearer* entertains
“ of *God*: It being vain and insignificant to compel a Man to
“ swear by a God whom he doth *not* believe, and therefore, doth
“ *not* Reverence. And, no one thinks himself bound to the Divine Majesty in any other Words, or under any other Titles,
“ than what are agreeable to the Doctrines of his *own* Religion;
“ which, in his Judgment, is the *only* true Way of Worship.” And hence likewise it is, that, *he* who swears by *false Gods*, yet such as were by him accounted *true*, stands *obliged*; and, if he deceives, is *really* guilty of Perjury. Because, whatever his peculiar Notions were, he certainly had *some* Sense of the Deity before his Eyes; and therefore, by wilfully forswearing himself, he violated,

unwilling to be deprived of, by his Justice. For Example: Should a Man swear, by his Life, his Soul, his Head, or, his Salvation; it is the same

lated, as far as he was able, *that* Awe and Reverence which he owed to Almighty God. Yet, when a Person requiring an Oath from another, accepts it under a Form agreeable to *that* Worship which the Swearer holds for true, and he himself for false, he cannot, in the least, be said, hereby to approve of *that* Worship. Thus, a Christian, when he admits of the Oath of a Jew, doth, on no Account, subscribe to his Opinion, who denies the one only true God, the Maker of Heaven and Earth, to be the Father of our Lord Jesus Christ. Upon this last Passage Mr. Placette, in his Treatise of an Oath, L. 1. c. 13. distinguishes between requiring an Infidel to swear by his false Gods, and proposing an Oath barely to him. In the first, he is induced to commit an Act of Idolatry, which can never be allowed; but, in the other, he tempts him not to Idolatry, though he has Reason to believe that he will commit the Sin in doing what is required. The Reason is, because, *what* he requires is innocent; for, it is not unlawful to swear. But, if he adds any thing, criminal to what is required, he does it of his own accord, without being determined or induced by him who proposed the Oath. But, this Distinction does not seem necessary, in the Judgment of Mr. Barbeyrac. For, says he, "To require an Oath of a Heathen, is, in my Opinion, the same Thing, as to desire him to swear by his false Gods. He cannot swear, but by the Object of his religious Worship: And, if he swears by any thing else, no Man will take it for an Oath." The Truth is, though an Oath considered in itself is a religious Act; yet, in common dealing, it ought to be looked upon as no more, than a civil Act. 'Tis a Security that is required; and the Force of it depends upon the Impression that the Fear of God makes upon Men's Minds, which imports no more, than that he that swears, calls the true, or some false God to witness, provided we swear not lightly, or without Necessity. "I compare it, says he, to Naaman's Action, who, to discharge his Office, went into the Temple of Rimmon, and bowed himself there, to support his Master the King of Assyria, which the Prophet Elisha did not disallow. See 2 Kings v. 18. and Joshua xxiii. 7. where the Israelites are forbidden to swear by other Gods, which refers to the rest of the Canaanites, with whom they were to have no Converse, lest they should be won to serve and worship their Gods, to which they were too much disposed. Puffend. Law of Nature and Nations. B. 4, Ch. 2.

Thing

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Thing, as if he had said, “ I swear (g) by *that* “ God, to whom I owe my Life, my Soul, and “ Head ; and, from whom I expect Salvation.” And, by this, an *Oath* is particularly distinguished from a *bare Assertion* or *Promise* ; both of which are made by Men, without any *express* or *tacit* Intervention of the divine Name. But, God is called upon, *as a Witness* ; and, by this, an *Oath* is distinguished from a *Vow*. For, in a *Vow* we apply to, or transact with, *God himself* as with a *Party*, to whom *Vows* are immediately made ; but, in an *Oath* we transact with *Man* ; for, God is brought in, not as a *Party*, but as a *Witness*. I said in the *Definition*, that *God* was *invoked*, and *as a Witness*, simply and precisely ; but, not as a *Judge* or an *Avenger*, which yet some are pleased to add, and indeed truly, but perhaps without any Necessity, in regard a *Definition* ought to be free from all Superfluity. I own, indeed, that, he who swears, does both *these* Things, namely, that, he brings in God as a *Witness* of the Truth of what he says ; and, as a *Revenger* of his Falsehood ; but, the former, *primarily* and *by itself* ; the latter, *secondarily*, and *by Consequence*. For, that, God should bear witness to the Truth, relates of *itself* or simply, to the *Nature* of *Testimony* ; but, that, he should punish Falsehood,

(g) *Qui per salutem suam jurat, per Deum jurare videtur : respectu enim Divini Nominis ita Jurat.* Ulpian. L. 38. ff. de Jurejur.

does not so much relate to the Nature of *Testimony*, as to the *Effect*. But, it is not sufficient to constitute an *Oath*, that, God should be brought in as a *Witness*, unless he be also *invoked*. For, God may be made use of as a *Witness*, and that too for the *Confirmation* of a doubtful Matter, without an *Oath*: As, if, in order to establish this Position, namely, *That Images ought not to be worshipped*, I should produce some *Passages* out of the *sacred Scriptures*; it is true, this would be, undoubtedly, to produce the *Testimony* of God for the *Confirmation* of a doubtful Matter; and yet, it is as true, that, this would not be an *Oath*. For, it is one thing, to cite God as a *Witness* with regard to a *Testimony* long since given, which may be done without any *Invocation*; and another, (and widely different from the former), to *invoke* God as a *Witness* in respect of a *Testimony* immediately to be given, in which the *formal Reason*, as it were, of an *Oath* consists.

5. I said 3dly, and 'tis the last Member or Branch of the *Definition*, that God is invoked as a *Witness* to this End, "That a doubtful Matter may be confirmed." In which Words, not only the *End*, but the *Matter* or *Object* of an *Oath*, are contained. The *Matter* or *Object* about which an *Oath* is employed, is, a doubtful Matter, that is, a Matter, the *Certainty* of which, so depends upon the *Credit* of the Person who affirms it, that, it cannot be commodiously found out by any other Means. The *Testimony* of God, says

says Philo, is to be produced, only in a doubtful or controverted Matter. Hence, in the first Place, Those Scibilia, or knowable Things, such as are Things universal, which are certain, always uniform and alike, and cannot be otherwise; or 2dly, Things particular, which depend on the Testimony of the Senses; or, Things that appear to be undoubtedly certain from the Monuments of History, universal Tradition, or, from some other public Testimony which is so free from all Suspicion of Falshood, that a rational Man can find room for doubting of it, are not the proper Matter of an Oath. For, how ridiculous and contrary to sound Reason would it be for a Man to confirm by an Oath, "That a Triangle has three Angles equal to two Right ones; or, that, Virtue is to be desired or coveted for its own Sake; or, that, Aristotle was a Philosopher; or, Cicero an Orator; or, that, a Youth disputing in the Schools, who, being destitute of an Argument to prove a Proposition denied by another which it was incumbent upon him to make good, should (b) take his Oath, that it was true?" Therefore, particular Things, such as, the Facts of particular Men, together with their Circumstances; which, on Account of the various Casualties and Contingencies to which they are obnoxious, are so mutable and dubious,

(b) Derisibile esset, si quis, in Disputatione alicujus Scientiæ, vellet Propositum per Juramentum Probari. Aquin. 2. 2. 9. 89.

that there can be *no Certainty* had of them (i) by *Way of Demonstration*, nor any other *Certainty* than *what* depends on *human Faith*, are the *Things*, which an *Oath* properly serves to confirm. This the *Apostle*, in the 6th Chap. to the *Hebrews*, intimates by *that* Expression, *An Oath is the End of all Strife*; as if he had said, There only is Room for an *Oath*, where there is *no End of Contradiction*, that is, *where* the Promovent on *one Side* affirms, and the Impugnant on the *other* denies; *there* it is necessary, that *one Part* of the *Contradiction* should be confirmed by the Interposition of an *Oath*, that the *other* may give Place; and so, the *whole Contest* be determined, and brought to an End.

6. And, this *Confirmation*, as 'tis called by the *Apostle*, in the (k) Place now mentioned, is the *very End of an Oath*. For, since *particular Things* are *so dubious* and *uncertain*, on Account of their *Contingency*, and cannot be proved otherwise than by *Witnesses*: And, since *all human Testimony* is *so very weak* and *fallible*, especially on account of these two Defects, namely, of *Knowledge*, (for, *we are ignorant of many Things*); and, of *Conscience* or *Goodness*, (since (l) *every Man's a Liar*); and yet, since it is *expedient* and *fit*, that Men should have *some Certainty* concerning those *Things* that are contro-

(i) Φασις ἀναπόδεικτος. Aristot. 2 Rhet.

(k) Heb. vi. 16.

(l) Rom. iii. 4.

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verted, and mutually agitated betwixt them; without which there can be *no Faith* nor *Justice* among Men, which are the *strongest* Bonds of human Society; it is, therefore, necessary, to have Recourse to the (6) *Testimony of God*, who can neither deceive, nor be deceived.

And accordingly (7), an *Oath* has been received in all Nations, by God's Appointment, pursuant

(m) Maximum Remedium expediendarum Litium, L. 1. ff. de Jurejur. Maximum dirimendarum Causarum Remedium. L. 3. Sect. & God. de Jurejur.

(6) *Puffendorf* observes on this Passage, "That when we say, God is invoked as a Witness in *swearing*, it ought, on no Account, to be hence inferred, that an *Oath* should be looked on, as the *Testimony of God*; or, as if *God himself* gave *Attestation* to the *Veracity* of the Swearer: which seems to be the *Opinion* of *Bishop Sanderfon*. But, when an omniscient and an omnipotent Being is called to be both a Witness or Guarantee, and likewise an Avenger; we, therefore, presume upon the Truth of what is delivered, because, we cannot conceive any Person to be arrived at such a Pitch of Impiety, as lightly to stir up the *Divine Vengeance* against himself. And hence, *Perjury* appears to be a most monstrous Sin; inasmuch, as by it the forsworn Wretch shews, that, he at the *same* Time contemns the *divine*, and yet is afraid of, *human Punishment*; that, he is a daring Villain towards *God*, and a sneaking Coward towards *Men*." B. 4. Ch. 2. *Law of Nature*, &c.

(7) Mr. *Hobbes's* Notion of *Oaths*, says the learned *Bishop Cumberland*, (C. 9. S. 11. of *Law of Nature*) in Effect destroys civil Society by destroying, or rendering ineffectual its *greatest* Security. His Notion is, That an *Oath* adds nothing to the *Obligation* of a *Compact*; or, that a *simple Compact* does no less oblige than that which we have confirmed by an *Oath*. "I readily own, says he, that a *Compact* not confirmed by *Oath* is *Obligatory*." To which I add, that it is thence certain, that *God* will punish the Breach of plighted Faith, according to the Prayers of him who takes a lawful *Oath*; because, it is the Transgression of a *natural Law*, which *God* has enforced by a Sanction for the common Good; and, that this is so known from the *Nature* of Things; that, there is no need of

pursuant to the *Law of Nature*, as a proper *Remedy* for this Evil. "In the Judgment of every
 "one, says Diodorus the Sicilian, an Oath is
 "the greatest Confirmation amongst Men." "It
 "is, says Dionisius, the Halicarnassian, the last,
 "or utmost Assurance." And the great *Apostle*,
 more elegantly than either, in the 6th Ch. to the
Hebrews, tells us, *That it is an End of all*
Strife. When we arrive at this Point, we come
 to our *ne plus ultra*. Here all human Dispu-
 tation and Contradiction must make a Stand. Not,
 that every Thing that is confirmed by an Oath is
simply and *absolutely* certain or true: No; for,

of Revelation, or of any Person standing in the Place of God, to
 signify, that God accepts to be Guarantee of such a Vow, as *Hobbes*
 seems to insinuate. However, an Oath introduces a new Obliga-
 tion; because, then we owe Obedience to another divine Law, by
 which we are forbid, under a new and most grievous Punishment,
 to invoke the Name of God rashly, and in Confirmation of a
 Falshood. Nor, is *Hobbes's* Exception to the contrary, of any
 Validity, when he affirms, that, *He who in an Oath renounces the Di-*
vine Mercy, unless he perform his Promise, does not oblige himself
to any Punishment, because it is always lawful for him to deprecate
Punishment, however provoked, and to take the Benefit of God's Par-
don, if it be granted. For, even they, who may lawfully deprecate
 Punishment, when they have deserved it, are obliged, both to be
 cautious not to deserve Punishment, and also, to bear it patiently
 when they have. After these Things, says this great *Prelate*, are
 duly weighed, I beseech the Reader to consider, what Firmness
Hobbes has left in *Civil Society*, who contends, "That an Oath adds
 "no Obligation. Kings are deceived, and vain are the *Laws* en-
 "joining Oaths of Fidelity to them. In vain are their Privy-Coun-
 "sellors, their nearest Attendants about their Persons, or their
 "armed Guards, sworn. Neither sworn Witnesses, nor Judges,
 "are at all the more obliged upon Account of Oaths, in public Ju-
 "dicature." Mr. *Hobbes*, truly, has, by a slight Kind of Reasoning,
 freed them from all Obligation of this Kind, and, with the same
 case, has subverted all Civil Government.

then there would be *no* such Thing as *Perjury*, (with which, alas! the whole World so much abounds); but, that, in this *mortal* Condition, (where it seemed proper to the Divine Wisdom, that the Children of Men should live in much Darkness and Uncertainty of Things here *below*, to the End that they may the *more* diligently apply their Minds to Things *above* which are *more* certain), there can be *no* greater human Assurance than *that* of an Oath, which is attested and confirmed, as it were, from *Heaven*, by the *Invocation* of the *Divine* Name.

7. In this *Definition* of an Oath, expounded as you have heard, *all the Causes of an Oath* are, in some sort, contained. That *first* Clause or Member, in which it is said to be a *religious Act*, that is, of him that swears, necessarily includes the Will of the Agent, that is, of the Person swearing, (every Man being a free Agent, and every human Act voluntary), as its *primary efficient Cause*. The *second* Member expresses the *formal Cause* of an Oath, which is, *the calling of the Divine Name to witness*; or, the *Invocation of God, as a Witness*. The *third* Member comprehends both the other Causes, namely, “The *Material* and the *Final*.” A Thing doubtful is the proper *Matter*, about which an Oath is employed, that is, a Matter, the Belief of which is not sufficiently established with the Person concerned, or transacted with therein, by the *bare* Testimony of him that asserts it. And, the *proper*

per End of an Oath is, "That, a doubtful Matter may obtain that Certainty by the Invocation of the Testimony of God, than which there cannot be a greater with regard to human contingent Affairs." I must here, my Auditors, beg your Excuse for being so prolix in explaining the Definition of an Oath. But, when, by God's Permission, I shall come to state and determine those doubtful Cases, which I promised to do, with respect to the four Kinds of Causes above-mentioned; I make no doubt, but you will all then easily perceive, how beneficial it will be to the Studios, and how conducive to my Design, previously to have been made acquainted with what I have so largely expounded concerning the Nature of an Oath.

8. I have hitherto treated only of an Oath, in general. In the next Place, I shall explain, but more briefly, what a promissory Oath, in particular, is. There are various Divisions and Distinctions of an Oath among Divines and Civilians, according to their different Professions. It is sometimes divided into judicial and extrajudicial; sometimes, into public and private; into simple and solemn; into bare and execratory; into absolute and conditional; and several other Ways. But, the most eminent and most useful Division of all, and never omitted by any that I know of, who have wrote concerning an Oath, is that, by which it is distinguished into, "Assertory and Promissory." For, since in every

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Oath, (as has been before mentioned), the Name of God is *taken* by the Swearer, by Way of *Invocation*, for the *Confirmation* of *some doubtful Matter*; we must observe, that *this* may happen to be done *three* different Ways. For, a Thing may be doubted of, either with regard to the *Time past*; as, Was it so, or not so? as, Did you see *Cain* Yesterday in the Market, or did you not see him? Or, with regard to the *Present*; as, Is it so, or, Is it not so? as, Have you the Money I deposited with you, or have you not? or, lastly, with regard to the *Time to come*; as, Will it be so, or will it not? as, Will you lend me the Sum of an hundred Pounds To-morrow, or will you not? As often, therefore, as God is called upon in the taking of an Oath to bear witness to a Thing *past*, or *present*, such Oath is generally called "*Affertory*"; because, the Swearer, without *any* Promise or Engagement for the *future*, asserts *only*, that the Matter either *is*, or *was* so, as he *then* swears. But, should God be invoked in an Oath to bear Testimony to a Thing *future*; that is called, a *Promissory Oath*; because, the Person swearing *promises*, that he will, in *Time to come*, either do, or not do, some *particular* Thing. The *chief* Use of *Affertory* Oaths is in *Trials at Law*, in order to *end* Suits, especially in Questions of Fact. *Promissory Oaths* are of very little Use in Trials at Law; but, of very great Use in Promises, Bargains, and

and Contracts. Of this Kind of Oath we have many Examples in the *sacred History*; and in many other Writings. (n) *Abraham's* Servant piously swears, that he will faithfully observe his Master's Commands, intaking a Wife for his Master's Son. (o) *Jashuah*, and the principal Men of the People of *Israel* swear, but incautiously, to keep a Covenant with the *Gibeonites*. (p) And, (*King Herod* swore, but very rashly, that he would give the Daughter of *Herodias* whatsoever she should ask.

9. We must further observe, that, under the Appellation of a *promissory Oath*, the *comminatory Oath* is also comprehended; such was that rash Oath (q) of *David*, concerning the Destruction of *Nabal*; and that rash Oath of certain (r) *Jewish Zealots*, by which they bound themselves, neither to eat nor drink, 'till they had slain *Paul*. These, and others of the same Nature, are not properly *Promises*; which Word seems rather to signify something *gratuitous*, or *freely* bestowed to another; yet, the Word, *Promise*, by a certain *Synecdoche* joined to a *Catachresis*, (a Thing familiar with good Authors, but more especially in such Words as refer to something *future*, as in the Word *sperare*, to hope, when put for *timere* to

(n) Gen. xxiv. 9.

(o) Jos. ix. 15.

(p) Mat. xiv. 7.

(q) 1 Sam. xxv. 22.

(r) Acts 23. 12.

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fear, and the like), may *metaleptically* be also extended to *Comminations*. So, *That Oath* of God, by which he (s) *sware in his Wrath*, that, the Children of *Israel*, who had, by various Provocations, *tempted* him in the Wilderness, should not enter into his Rest, may, and generally is, no less called *Promissory*, (though not very properly), than *That* by which he (t) *sware to their Fathers*, that he would give them the Land of *Canaan* for their Inheritance.

10. Nor, indeed, does it signify any Thing at all, with respect to the *Nature* or *Effect* of a *promissory Oath*, whether the *Oath* be expressed *nakedly*, or with an *Execration* annexed to it. For, though there are some of the *Schoolmen*, to whom *that Oath*, which is taken with a *simple Attestation*, seems to differ in Kind, from *that* which is taken with an *Execration* *superadded* to it; to which Opinion *they* are for *this Reason* induced, that, in the former, *God* is called upon only as a *Witness*, but in the latter, also as a *Judge*; yet, if we consider the Matter *more attentively*, it will easily appear from what has been already said, that, it is the *same* Thing, whether *only* the one, or *both* of them, be done. For, in *every Oath*, which Way soever taken or uttered, whether *nakedly*, or with an *Execration*, *God* is either expressly, or at least implicitly, *invoked*, both as a

(s) Psal. xc. ult.

(t) Deut. i. 8.

Witness, and as a *Judge*; but, as a *Witness* primarily, and simply; as a *Judge*, secondarily, and by *Consequence*. But, that is the most clear *Form* of an *Oath*, in which *God* is explicitly called upon as a *Witness*, and wherein the *Execration* or *Imprecation* is subjoined to it, as if a *Man* should swear thus, “I call *God* to *Witness*, that “I will do *this*, or *that Thing*, and may He con-
“found me, if I do it not.” But, it generally happens, that, either by the *Omission* of the former, or latter *Part*, the *Oath* may be contracted, and more succinctly taken, as is sufficiently evident from those many *Examples* in the *sacred Writings*, wherein *God* is introduced as swearing after the *Manner* of *Men*. Where, we may find *God* swearing sometimes by a simple *Attestation* without any *Execration*, as, (u) *I live*, saith the *Lord*; (w) *I have sworn by myself*; or, (x) by my *Holiness*; and sometimes, by an *Execration* alone, without any express *Attestation*; but then, that seems to be also elliptically and briefly expressed, implied, and understood in the *Hebrew Particles* used in ON ..
NOON
such *Places*, either on Account of the *Honour* and *Reverence* due to so great a *Majesty*; or, in Compliance with the *Manner* of *Men*, who commonly, by the *Figure Aposiopesis*,

(u) Ezek. xiv. 16, 18, &c.

(w) Gen. xxii. 16.

(x) Psal. lxxxvi. 35.

suppress Words of an (y) evil Omen; as, in that Passage of the Psalmist, *I swear in my Wrath — If they shall enter into my Rest.* Yet, this, in the mean Time, appears to be certain, that every promissory Oath, in whatsoever Form it may be conceived, whether in a more copious, or contracted one, provided, it be an Oath, and not a mere *Asseveration* or *Obtestation*, virtually contains therein, both an *Attestation* and an *Execration*. For, in an Oath, not only the *Execration* supposes the *Attestation*, as being a Thing in Nature prior to it; but, the *Attestation* infers the *Execration*, as it's necessary Consequence. That Expression (z) of *Plutarch* is well known, "Every Oath with an Execration, if violated, ends in Perjury." And, so much may suffice to be said concerning the Nature of a promissory Oath.

II. It remains, That I add now, in the last Place, somewhat concerning the Nature and Force of an *Obligation*. The Lawyers say many Things, and prolixly enough, concerning *Obliga-*

(y) μαρτυρ. Aristoph. in Ran. 5. ubi Scholiastes, ἡλικτιπῶς ὁμνῶν, καὶ ὅτις ἐδὼκεν τοῖς ἀρχαίοις, ὥστε μὴ προσδίδαι τὸν διὸν τοιαύτης χάρις. ἐν δὲ τοῖς ποιητοῖς ὁμοίως χρῆσαι ἐπισημαζόμενοι. Et malé ominatis parcite verbis. Hor. 3. Carm. 14. Hinc formula, Εὐφημῆτε, bona verba, &c.

(z) Plutar. in Roman. quæst. 41.

(z) This is sometimes translated thus, "Every Oath terminates in the Curse of Perjury," or, That is the Ground and Bottom, upon which all swearing depends. Puffend. L. 4. c. 2.

tions.

tions. They define an *Obligation* thus, (1)

"An *Obligation* is a *Bond* or *Tie* of *Law*, by
which

(1) *Obligation*, (the Word *Obligatio*, being derived *à Ligando*), properly denotes a *Tie*. — A Man *obliged*, is, therefore, a Person who is *tied*. And, as a Man bound with Cords, or Chains, cannot move or act with *Liberty*; so, 'tis very near the same Case, with a Person who is *obliged*; with *this* Difference, that in the *first* Case, it is an *external* and *physical* Impediment, which prevents the Effect of one's *natural* Strength; but, in the *Second*, it is only a *moral* Tie; that is, the *Subjection* of *Liberty* is produced by *Reason*, which being the primitive Rule of Man, and his Faculties, directs, and necessarily modifies his Operations, in a Manner suitable to the *End* it proposed. We may, therefore, define *Obligation*, considered in *general*, and in its *first* Origin, to be; "a *Restriction* of *natural Liberty*, produced by *Reason*; inasmuch, "as the Counsels which *Reason* gives us, are so many Motives, "that determine Man to act after a certain Manner, preferable to "another."

Such is the Nature of *primitive*, and *original* *Obligation*. From thence, it follows, that *this* *Obligation* may be more or less strong, more or less rigorous, according as the Reasons that establish it, have more or less Weight; and consequently, as the Motives from thence resulting, have more or less Impression on the Will. For, manifest it is, that, the more these Motives are cogent, and efficacious, the more the Necessity of conforming there-to our Actions becomes strong, and indispensable.

I am not ignorant, that *this* Explication, of the Nature and Origin of *Obligation*, is far from being adopted by all *Civilians*, and *ethic* Writers. Some pretend, (see Dr. Clark on the Evidence of natural and revealed Religion), "that the *natural Fitness*, or *Unfitness*, which we acknowledge in certain Actions, is the true, and *original* Foundation of all *Obligation*: That, *Virtue* has an *intrinsic Beauty*, which renders it amiable of itself; and, that *Vice*, on the contrary, is attended with an *intrinsic Deformity*, which ought to "make us detest it; and this, antecedent to, and independent of, the "Good and Evil, of the Rewards and Punishments, which may arise "from the Practice of either."

But, this Opinion, methinks, can be supported no farther, than, as it is reduced to *that*, which we have just now explained. For, to say, that *Virtue* has, of itself, a *natural Beauty*, which renders

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which a Man is bound to pay *that* which he owes.
Which *Definition*, will not be less *Commodious*, for
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it worthy of our Love; and, that, Vice, on the contrary, merits our Aversion; is not *this*, acknowledging, in Fact, that we have *Reason* to prefer *one* to the *other*? Now, whatever *this Reason* be, it certainly can never become a Motive, capable of determining the Will, but inasmuch, as it presents to us some Good to acquire, or tends to make us avoid some Evil; in short, only as it is able to contribute to our Satisfaction, and to place us in a State of Tranquility, and Happiness. Thus, it is ordained by the *very Constitution* of Man, and the *Nature* of *human Will*. For, as Good, in general, is the Object of the Will; the only Motive, capable of setting it in Motion, or, of determining it to one Side, preferable to another, is, the Hopes of obtaining *this* Good. To abstract, therefore, from all Interest, in respect to Man, is depriving him of all Motive of acting, that is, reducing him to a State of Inaction and Indifference. Besides, what Idea should we be able to form of the Agreeableness, or Disagreeableness of human Actions, of their Beauty or Turpitude, of their Proportion or Irregularity, were not all this referred to Man himself; and to what his Destination, his Perfection, his Welfare, and, in short, his *true Felicity* requires?

Most *Civilians*, (particularly Mr. *Barbeyrac*), are of a *different* Opinion from that of Dr. *Clark*. "They establish, as a *Principle* of *Obligation*, properly so called, the *Will* of a *Superior Being*, on whom Dependence is acknowledged. They pretend, there is nothing but *this Will*, or the Orders of a Being of *this Kind*, that can bridle our Liberty, or prescribe particular Rules to our Actions. They add, that neither the *Relations* of *Proportion*, nor *Disagreement*, which we acknowledge in the Things themselves, nor the *Approbation* they receive from *Reason*, lay us under an indispensable Necessity of following those Ideas, as the *Rules* of our Conduct. That, our *Reason*, being in Reality nothing else but *ourselves*, no Body, properly speaking, can lay himself under an *Obligation*. From whence they conclude, that the *Maxims* of *Reason*, considered in themselves, and independent of the Will of a *Superior*, have *nothing Obligatory* in their Nature."

This Manner of explaining the *Nature*, and laying the Foundation of *Obligation* appears to me *insufficient*, because, it does not ascend

the Explication of those Things that relate to the *internal Court of Conscience*, than for the Explication

ascend to the *original Source* and *real Principles*. True it is, that the *Will* of a *Superior* obliges those who are his *Dependants*; yet, *this Will* cannot have such an Effect, but, inasmuch, as it meets with the *Approbation* of our *Reason*. For this Purpose, 'tis not only necessary, that the *Superior's Will* should contain nothing in itself, *opposite* to the Nature of Man; but moreover, it ought to be *proportioned* in such a Manner to his *Constitution*, and *ultimate End*, that we cannot help acknowledging it, as the *Rule* of our *Actions*; inasmuch, that there is no neglecting it, without falling into a dangerous Error; and, on the contrary, the *only Means* of attaining our *End*, is, to be directed by it. Otherwise, 'tis unconceivable, how Man can *voluntarily* submit to the Orders of a *Superior*, or determine *willingly* to obey him. Own, indeed, I must, that according to the Language of *Civilians*, the Idea of a *Superior*, who Commands, must intervene to establish an *Obligation*, such as is commonly considered. But, unless we trace Things *higher*, by grounding even the *Authority* of this *Superior* on the *Approbation* he receives from *Reason*, it will produce only an *external Constraint*, very different from *Obligation*, which hath of itself a Power of penetrating the Will, and moving it by an *inward Sense*; inasmuch, that Man is, of his *own Accord*, and without *any Restraint* or *Violence*, inclined to obey.

From all these Remarks, we may conclude, that the Differences between the *principal Systems*, concerning the *Nature* and *Origin* of *Obligation*, are not so Great as they appear at *first Sight*. Were we to make a *closer Inquiry* into these Opinions, by ascending to their *primitive Sources*, we should find, that these different Ideas, reduced to their *exact Value*, far from being Opposite, agree very well together; and ought even to concur, in order to form a *System* connected properly with all its essential Parts, in Relation to the *Nature* and *State* of Man.

'Tis proper, at present, to observe, that there are *two Sorts* of *Obligations*; one, *internal*, and the other, *external*. By *internal Obligation*, I understand, *that*, which is produced only by our *own Reason*, considered as the *primitive Rule* of Conduct, and in Consequence of the Good or Evil, the Action of itself contains. By *external Obligation*, we mean *that*, which arises from the *Will* of

cation of those that belong to the *external Court* of *Judicature* in Church or State; provided, the Word, *Law*, be not restrained to *human positive Law*, but be extended so, as to comprehend also the *whole, divine, and natural Law*. Now, since, as appears from the *very Definition* itself, every *obligatory Bond* derives it's *Original* from *some Law*; and, since *Law* is *Twofold*; the One, *divine and natural*; the other, *civil and human*; so, the *Bond* or *Obligation* arising from thence, is *Twofold* also; namely, the *natural Bond*, which obliges *naturally*, and in the *internal Court*, by Virtue of the *divine Law*; and the *civil Bond*, which obliges *civilly*, and in the *external Court*, by Virtue of the *human Law*. Some call the former, the *Obligation of Equity*; and the latter, the *Obligation of Justice*. But, I shall not here enter into a Dispute, whether they call them so properly, or improperly; for, since we agree with regard to the *Thing*, what need is there to dispute about

of a Being, on whom we allow ourselves dependant, and who commands, or prohibits some particular Things, under a *Communion* of Punishment. Whereto we must add, that, *these two Obligations*, far from being opposite to each other, have, on the contrary, a perfect Agreement.

For, as the *external Obligation* is capable of giving a *new Force* to the *internal*; so, the *whole Force* of the *external Obligation* ultimately depends on the *internal*; and, 'tis from the Agreement and Concurrence of *these two Obligations*, that the *highest Degree* of *moral Necessity* arises; as also, the strongest Tie, or, the properest Motive to make impression on Man, in order to determine him to pursue *steadily*, and never to deviate from some *fixed Rules* of Conduct. In a word; by this it is, that the *most perfect Obligation* is formed. *Burlamaqui's Princ. of Nat. Law, Part 1st, Chap. 6.*

Thus far of *Obligation in General.*

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the *Words*? But, as to the *third* Kind of *Obligation*, which the same *Lawyers* add, and assert to be compounded of *both* the former, they do not seem to do it with any *great Propriety*; or, at least, with any *apparent Necessity*. For, should any one be bound, both by the *natural* and *civil Law*, to the Performance of *one* and the *same Duty*; as for Instance, “to maintain his Parents in their old Age;” *this* would not be a *new* Kind of *Obligation*, compounded of *both*, but rather *two Obligations*, joined together, indeed, both by the *Subject*, and the *Object*; (by the *Subject*, inasmuch, as they oblige the *same* Persons; and, by the *Object*, inasmuch, as they oblige to the *same Duty*); yet, *they* are *distinct*, both with regard to their *Nature*, and *Original*. The Reason is evident, because, many Things cannot, out of a *Mixture* of themselves, produce a *new* Species, without some *real* Change, or Alteration of *themselves*; whence (a) *Aristotle* defines (8) *Mixture* to be, *The U-*

(a) De Gen. & Corr. 1. Tex. ult.

(8) *Mixtion*, is, the Union and Coalition of divers Bodies into one. In Philosophy, a *mixt Body* is *that*, which is compounded of *divers* Elements, or Principles: By which, *mixt* stands contradistinguished from *simple*, or *elementary*, which is applied to Bodies consisting of *one* Principle only; as, the *Chymists* take Sulphur, Salt, &c. to do. But, the *Schoolmen* define a *mixt Body* to be a *Whole*, resulting from *several* Ingredients, *altered*, or *new-modified*, by the *Mixture*. On which Principle, the *several* Ingredients do not actually exist in the *Mixt*, but are all changed, so, as to conspire to a *new* Body, of a *different* Form, from the Forms of the Ingredients. The modern Philosophers rarely conceive the Term in so much Strictness.

nion of altered Things, that may be mingled, or compounded. There must be an *Alteration* in every Mixture: And, every Alteration is, a *real* Change, as appears clearly, in the Generation of any mixed Body out of the four Elements, which do *not* remain entire, but must be *broken* and *altered*. But, where a *new Obligation* is super-added to a *former Obligation*, as, in the Case before us, a *Civil* is to a *Natural*; there, *no* real Change is made of either; but, the *prior Obligation* remains in the very *same* State and Condition, in which it was before the Accession of the *posterior new* One. But, I am unwilling to dwell longer upon *these* Subtilties. By an *Obligation* I would, in *this* Treatise of *Oaths*, principally, or *solely*, be understood to mean a *natural* (9), or *moral Obligation*, and shall leave the *Civil* to be treated of by the *Lawyers*.

12. But,

(9) The *moral Obligation* of an *Oath* is founded upon the *first Principles* of the *Law of Nature*. It takes its *Rise* from the *first* Dawnings of *natural Reason*; gathers Strength, as our *Capacity* of discerning *Truth* from *Falsehood*, advances; and, arrives at *full* Maturity, so soon as we can conceive the *Being* and *Attributes* of an *eternal, first Principle*. *Natural Reason*, without the *Help of Revelation*; without the *Improvement of Science*, or, the Advantage of human Literature, can *discern*, evidently, the *sacred Obligation* of an *Oath*. To doubt it, would be, to suppose us *less* than *Rational*; to divest us of every human Faculty, and plunge us *lower* than the *meanest* Reptile.

The *Love of Truth*, however much that *Passion* is perverted, is *natural* to the *human Soul*, that is, to a Soul in its *natural* State of *moral Rectitude*, before *Vice*, vitious *Habits*, and ungovernable *Passions*, aliens to its *own* Nature, have *vitiating* its Inclination, and changed its constituent Faculties. Before this lamentable Change

12. But, beside *that* Distinction of an *Obligation*, which arises from its *Original*, with regard to the *Law*, from whence the *Obligation* proceeds; there is *another*, likewise, taken from its *Object*,

Change is effected, the *human Soul* starts at *Falseness*, as, at the Thought of *Annihilation*. To be, and, not to be, are Things, not more opposite, than *Falseness* and the *human Mind* are, in their *own Nature*. This Love of Truth is, an Emanation from our great Creator: It is, the Image, the Likeness we bear of the *Divine Author* of our Being. It is, the *Form*, under which we exist: And, according to the Proportion we possess of *this* divine Love, we advance to *that* Perfection, which, in the End, must crown us with unspeakable Happiness.

Thus, one Part of the *Obligation* of an *Oath* is founded upon, and, interwoven with, our *own* Natures, abstracted from any *Obligations* we have to the *Divine Being*. But, how strong must the *Force* of *that* *Obligation* be, when we consider the *Nature* and *Attributes* of the *eternal Mind*? So soon as we exist; at least, so soon as we are capable of knowing, that, we ourselves exist, we are immediately conscious of the Existence of a *first Principle*. Our *first Ideas* of him, however dark and confused, yet, still represent him, as the *God of Truth*. *Wisdom*, *Omniscience*, and *Omnipotence*, are but *secondary Ideas*, or, rather comprehended in *that* comprehensive Attribute, *Truth*.

So soon as the Use of *unprejudiced Reason* has enlarged our Notions of *that* incomprehensible Being; and, we have formed to ourselves, any *rational Opinion* of his boundless Attributes; then, the *moral Obligation* of an *Oath* appears in its full Extent. If we conceive him to be the *God of Truth*, we conclude *Falseness* to be an *Abomination* to him. If we acknowledge our Dependence on him, and are impressed with an Idea of his *Omnipotence*, we dare not provoke his Vengeance, by calling upon him to attest a *Lie*. If we represent him to ourselves as *omniscient*, as a Being, to whom the Secrets of our Hearts lie open, we can expect no Subterfuge in prevaricating; or, to deceive his all-discerning *Wisdom*, by the most cunning Evasion. To a rational Being, impressed with the Conviction of his Dependence on *such a God*, how impossible is it for him, to approach his Altar, with a *Lie* in his Mouth; or, call upon his Name to seal the Affirmation of any thing, but Truth.

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Object, that is, with respect to the *Payment* of the *Debt*, at which the *Obligation* aims, and to which it tends, and is carried. Now, a *Debt* is *two-fold*. A *Debt of Duty*, which a Man is obliged to

These are *Notions*, that would occur to an honest Heathen; that would have their Weight with the most illiterate *Pagan*. Natural, unassisted Reason, can discern their Force. They are understood in all Languages. The most barbarous Nations are not Strangers to *these* Truths; and, where Vice and polished Arts, have not given the Soul an unnatural Bias, they are acknowledged in all Parts of the Globe, even, in the most remote Corners of the Earth.

If the *Light* of Nature can discover these Truths; with what Force must they act upon a Soul, whose Understanding is enlightened, by the Advantages of revealed Religion? The Heathens, who confessed their Efficacy, following only the glimmering Light of natural Reason, knew themselves, and conceived Notions of the Deity, but by Halves. But, we Christians, by the Help of divine Revelation, are taught our Duty, and made acquainted, with the Nature of the moral Attributes of the Divine Being, by his own express Declaration, in a Language, which requires no Explanation; in a Style, that requires no Comment to understand it; and, in Doctrines, so plain and intelligible, that, we must be wilfully blind, if we mistake their Meaning. How inexcusable must we be, then, if, in our Practice, we pay less regard to the Obligation of an Oath, than the blindest Heathens ever did; and, daily, call that Being, to witness the present Falsehoods, with whose Attributes we pretend to be so much better acquainted, than the Pagan World ever was?

The Heathens adored the Supreme Being, under various sensible Figures; and, the Vulgar, among them, ascribed divine Attributes to Stocks and Stones; and to, almost, every Part of the animate, and inanimate Creation, wherein, they fancied the Divinity to reside; yet, never durst approach the Altars of these very Idols, with a Lie; nor, call upon their wooden Deities, to attest a Falsehood: No: They were more consistent. They supposed, (however absurdly), that, the Divinity, represented by these Logs, was able to punish their Perjury; and so great a Lover of Truth, as to exert its Power in its Defence. We laugh at their Notions of Divinity,

to perform by the Precept of the Law; and a Debt of Punishment, which a Man, by the Sanction of the Law, is obliged to suffer, in case he has neglected his Duty. In the former Sense, we call the mutual Offices, or Duties of Charity, Debts; because, enjoined by the Law of God, according to that Expression of the Apostle, in the 13th Ch. to the Romans, and the 8th Verse, *Owe no Man any Thing, but to love one another.* In the latter Sense, we call Sins, Debts, as in the Lord's Prayer, (b) *Forgive us our Debts or Trespases*; and, eternal Death is implied to be a Debt, according to that Passage in the 6th Chap. to the Romans and 23d Verse, *The Wages of Sin is Death.* Yet, we must observe, that the latter Debt is always contracted, by the Non-payment of the former. So that, should a Man fully discharge the Debt of Duty by performing what the Law enjoins, he would not be obliged, by any

(b) Mat. vi. 12.

nity, and ridicule the Worship they paid to Beings, that could neither hurt, nor relieve them; Yet, we are daily guilty of grosser Folly, and more glaring Iniquity. We worship the God of Truth; acknowledge our Dependence on him; and, confess his Power to punish our Impiety. We can declaim upon all his Attributes; and pretend to be perfectly acquainted with his divine Will; and, with the same Breath, openly and avowedly, affront him in the most solemn Act of religious Worship, that a rational Creature is capable of. We can, in the most solemn Manner, invoke his Name to the greatest Falsehood in Nature; mock at the Vengeance, due to Perjury; and attempt to impose upon the Searcher of Hearts; upon a Being, before whom, our most secret Thoughts lie naked and exposed; by the mean Evasion of a Quibble, or, the little Tricks of Cunning and Sophistry.

Anonym.

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Debt of Punishment, to endure what the Law threatens. Now, there is a twofold Obligation, evidently, of the same Denomination, that answers to this twofold Debt; namely, An Obligation to perform the Duty, and, an Obligation to endure the Punishment; or, as 'tis commonly said, and amounts to the same Thing, "An Obligation to the Fault, and an Obligation to the Punishment": Yet, this must be understood in such manner, as that the Obligation to the Fault must be prior and superior to the other, as it really is, not only in its own Nature, but also, in the Intention of the Law. For, it is the Part of a Tyrant, and not of Law, or Justice, to intend and purpose Punishment for any other End, than for what is relative to Guilt. And, that Expression of the Apostle is true, even in this Sense, though it might, perhaps, be better understood in another, (c) The Law is not made for the just, or righteous Man. The Law, therefore, intends primarily, directly, by itself, and simply, to oblige to Duty and Obedience; but not to oblige to Pains and Punishment otherwise, than secondarily, indirectly, consequentially, and upon a certain Supposition, that is, upon a Supposition of the Contempt, or Neglect of Duty. The Apostle, in his 13th Ch. to the Romans, seems to have joined both these Obligations together, where he treats of the Subjection due to the supreme Power; Wherefore, says he,

(c) 1 Tim. i. 9.

(d) ye must needs be subject, not only for Wrath, but also, for Conscience-sake.

From which Words, I collect these three Things, pertinent to the present Purpose; first, That we may be obliged, by a double Bond or Tie, to the Performance of the same Thing, namely, By the Bond of Duty, and by the Bond of Punishment; for, so those Words, for Conscience-sake, and, for Wrath, import. Secondly, That the Conscience of Duty ought, among all good and pious Men, to be more prevalent, and more regarded, than the Fear of Punishment. And, thirdly, That, the Obligation of Conscience arises precisely from the Debt of Duty. From whence it is also evident, that, whenever we speak of the Obligation of an Oath, as it is a Matter of Conscience, we must understand that Obligation primarily and principally, by which we are obliged to the Performance of a Duty; and not that, by which we are bound to endure the Punishment due to Perjury.

13. These two Distinctions concerning Obligations being thus supposed and granted, we are, moreover, to know, that every Oath is, in its (10) own Nature, obligatory: Insomuch, that, should a Man

(d) Rom. xiii. 5.

(10) Puffendorf tells us, that, we ought carefully to observe, that Oaths do not of themselves produce a new and peculiar Obligation, (1) but are only applied as an additional Bond to an Obligation, in its Nature, valid before. For, whenever we swear, we always suppose some Matter, upon Non-performance of which, we thus imprecate

a Man swear *without an Intention* to oblige himself; nay, tho' he should swear with an Intention *not to oblige* or bind himself; yet, he is, by the *very Act of taking such Oath, bound* to perform it;

as
 imprecate the Vengeance of Heaven. But now, this would be to no Purpose, (2) unless the Omission of the Thing supposed, had been *before* unlawful, and, consequently, unless we had been *before* obliged. Tho', indeed, it frequently happens, that we comprehend, in one Speech, both the principal Obligations, and the additional Bond of the Oath; as, for Instance, If I say, *So God be my Helper, as I shall pay you an hundred Pounds.* And yet, it doth not follow, that, an Oath is unnecessary, or superfluous, because, it is thus added to an Obligation *before* firm and good in itself. For, altho' all Men, except downright Atheists, believe, that, God will punish the Violation of Promises, *not* confirmed by Oath; yet, they believe, at the *same* time, and, with *good* Reason, that those Wretches will feel a more severe Vengeance, who have, in exprefs Terms, called down the Wrath of God upon themselves; and, so far as in them lies, have shut themselves out from all Hopes of Mercy, whilst they engaged in Wickedness, with so full a Purpose and Design, as to shew, that they valued not the Displeasure of him, who is able to bestow the greatest Goods, and to inflict the greatest Evils. Whence we may conclude, that those Acts, which were before attended with some inward Flaw, hindering any Obligation to arise from them, cannot be rendered *obligatory*, even by the *Addition* of an *Oath*. As, neither can a *prior* Obligation truly valid, be disannulled by a *subsequent* Oath; or, the *Right* which it gave another Person, be *reversed*. Thus, for a Man to swear, that he will *not* pay a just Debt, can be *no* Prejudice to the Claim of the Creditor.

Upon the former Part of *this* Section; namely, "That Oaths do not, of *themselves*, produce a new and peculiar Obligation, " &c." The learned *Barbeyrac*, observes, 1st. That *Grotius*, (L. 2. C. 13. S. 14.) supposes, on the contrary, that every Oath, by which we engage ourselves to do, or not do any thing to another, contains a *double* Promise: The one, respecting the Person that took the Oath, and the other, the *God* by whom we swear; and, one of these Promises may oblige, though the other does not. Mr. *La Placette*, who had been once of *this* Opinion, hath retracted it publickly. He maintains, in his *Treatise of an Oath*, (L. 2. C. 2.) that, properly speaking, we promise *nothing* to God

as I shall hereafter more fully shew, (if God permits), in its proper Place. Cicero (e) rightly observes, " That there was nothing our Ancestors
 " took greater Care of, than that the Tie of an
 " Oath should be always held most sacred, and
 " inviolably

(e) 3 Offic.

in an obligatory Oath; otherwise, there could be no Difference between a *Vow* and an *Oath*. Moreover, we often swear to do Things wherein God is not at all concerned, and, sometimes, with which he is displeased. For, it is ridiculous to say, that we have promised a Thing to any Man, who has no Interest by it, or which will be no Advantage to him, because, it displeases him. Lastly, Promises become void in themselves, when they are not accepted. If then, an Oath confirms a Promise made to God directly, it cannot be of Force, till we know, that God accepts it; and, how can we be assured of this, that God accepts a thousand Promises confirmed by an Oath, if they have no respect at all to his Service? What, then, is there in an obligatory Oath, more than a bare Promise made to the Person who is sworn to? Mr. La Placette, finds nothing that can give us a better Notion of this, than Treaties of *Warranty*, so common among Princes. Two Men, says he, make a Bargain; but, one suspects the other will break it; to assure himself of the Contrary, he propounds taking of an *Oath*, that is, to take God for the *Warranty* of the Agreement; and consents, that, in Case he breaks it, God shall declare against him, and punish his Perfidiousness. But, notwithstanding this, says *Barbeyrac*, I see, that, Mr. La Placette still maintains, that *Oaths* may be of Force, and Obligatory, although the Promises added to them be null. This he pretends to prove in the End; but, the Reasons he brings are weak, and not to the Purpose. And, we may easily foresee, that, he can produce nothing Satisfactory in this Matter, and, agreeable to his own Principles. He rejects the Opinion of a double Promise included in an *Oath*, because, we can have no Certainty, that God accepts an infinite Number of Things indifferent in their own Nature, to which we engage ourselves by Oath. But then, he ought to be sure, that God will be the *Warranty* of the Oath taken, after the same Manner as the Prince, who is *Warranty* in a Treaty, ought to agree to it. For, here is no Revelation, and I defy Mr. La Placette, and all the rigid Casuists to prove, that God will be *Warranty* in an Engagement otherwise invalid; at least, that it is his Will, that, the Holiness of an Oath may secure, to the wicked Man, the Benefit of his Extortion. According to Mr. La Placette, Fraud dispenses with

“*inviolably binding to the Performance of our Promises. But, what can be said more clearly upon this Subject, than what Moses says in the Text itself? If a Man shall vow a Vow, or swear an Oath to bind his Soul with a Bond.* Where, the double Repetition in the *Original*, according to the *Hebrew Idiom*, carries with it the greatest *Emphasis*, and augments the Signification of the Expression; as, *(f) Multiplying, I will multiply; and, Blessing, I will bless; that is, I will greatly multiply, and greatly bless; and so, by the Words, To bind with a Bond, must be understood, greatly or strongly to bind; as, if he*

(f) Gen. xxii. 16.

keeping an Oath, and, why may not *Violence* have the same Effect.

And, the same judicious Author observes (2). that, the Reason given by *Puffendorf*, “*Why Oaths do not of themselves produce a new and peculiar Obligation, but are only applied, as an additional Bond, to an Obligation, in its Nature, valid before,*” namely, *unless the Omission of the Thing supposed, had been before unlawful, and consequently, unless we had been before obliged,* does not appear to be Good; or, at least, is not well expressed. For, as *Puffendorf* says, a little after, and, at Sect. 19, It happens *ordinarily*, that, we engage ourselves, and swear at the same Time; otherwise, we can’t conceive of an Obligation antecedent to an Oath, and valid without any Dependence upon that religious Act. The Notion of an *additional Bond*, which *Puffendorf* mentions above, is sufficient to prove what he maintains. Men engage not themselves by swearing, but swear to confirm *their Engagements*. An Oath, in respect of the Obligation we take on us, is, as *Modes* and *Accidents* are to the *Substance*, without which they cannot subsist. So that, from the Moment, that the Engagement to which we have called God to witness, includes something that makes it null in itself; an Oath loses all its Force, and we swear *only* with the Mouth, as all those apparently do, from whom a Promise, by Oath, is *extorted*, either through Fear of Death, or some other great Danger, (L. 4. c. 2.)

had

had said, "Though even a bare Promise may
 "oblige the Conscience; yet, a Promise, with the
 "Addition of an Asseveration, or Obtestation,
 "binds more strongly; but still, a Vow, which
 "is made to God himself, binds the most strong-
 "ly of all; and, so does an Oath taken to Man,
 "provided, God be invoked as a Witness to it."
 Therefore, every Oath, as well the Assertory, as
 the Promissory, obliges, or binds the Conscience.
 No Man can doubt with regard to the Promissory,
 forasmuch as it respects some future Time;
 but, as to the Assertory, it may, perhaps, with
 some Colour, be doubted of, for this Reason, that
 every Obligation bears respect to something future;
 but, it has been before asserted, that, the Difference,
 betwixt an assertory and promissory Oath,
 consists in this, that, the former regards a Thing
 present, or past; but, the latter, a Thing future
 only. But, the Solution, here, is easy;
 Namely, that, the Obligation of an Oath, as
 such, does not fall primarily upon the Object, or
 Matter of the Oath; for, so, an assertory Oath,
 whose Object is a Thing past, or present, could
 not induce, or lay a future Obligation: But, the
 Obligation falls immediately, and directly, upon
 the Subject, that is, upon the Conscience of the
 Swearer, who, in both Kinds of Oaths, is ob-
 liged to the Performance of some Duty for the
 Future.

14. But, to make this Matter more evident;
 and, that, at the same Time, the Obligation of a
 promissory

promissory Oath, (which I undertook to explain), may clearly appear; I shall endeavour to shew, what is common to both Kinds of Oaths, with regard to the *Effect* of the *Obligation*; and, what is peculiar to the *promissory Oath* alone. In the first Place, then, this must be granted, which, in itself, is so evident, that, its contrary implies a manifest Contradiction; namely, “ That, al-
 “ though every *Obligation to Duty* does, with-
 “ out doubt, bear respect to a *Duty to be per-*
 “ formed in some future Time: Yet, this fu-
 “ ture Time may be at a greater, or less Dis-
 “ tance; or, may, even, immediately succeed the
 “ Time when the *Obligation* is contracted.” And, it is easy to observe, if we consider the Matter with some Intention, that, in every Oath, as well *Affertory* as *Promissory*, respect is had to some future Time. For, every one that swears, obliges himself, by the very Act, to declare the Truth in what he is going to say, whether, it be concerning a Thing past, or present, in an *Affertory*; or, concerning a Thing future, in a *Promissory Oath*. And, that *Obligation*, hitherto mentioned, is, equally common to both Kinds of Oaths; insomuch, that, if the Words of the Swearer should not be agreeable to the Intention of his Mind, he is, in both of them, guilty of the Fault of violating his Duty, and therefore, by necessary Consequence, liable to Punishment. But, in a *promissory Oath*, beside this *Obligation* that falls upon the Conscience of the Swearer, and

is common to it with the *Affertory*, as an *Oath*; there is, also, another further Obligation, which is proper and peculiar to itself, as 'tis *Promissory*, which falls upon the *Object*, or *Matter*, of the *Oath*; by Virtue of which, he that takes a *promissory Oath*, is obliged, not only to intend, for the present to perform that which he has sworn, which is, to speak Truth, that is, that his Words may be agreeable to the Intention of his Mind; but also, to endeavour, for the future, (to the utmost of his Power,) to fulfil that, which he has sworn, so, as to make his *Actions* answerable to his *Words*, that is, he not only obliges himself barely, to promise that alone which he really intends; but, he also further obliges himself, to the Performance of all that, which he hath promised by *Oath*.

This, even the very Words of *Moses*, in this Verse, clearly shew; If a Man, says he, swear an *Oath*, to bind his Soul with a Bond, he shall do according to all that proceedeth out of his Mouth.

And thus, as fully as I ought, and, as clearly as I could, have I laid my Sentiments before you, concerning the first Head of this Treatise, and shewn, what, an *Oath* in general is; what, a *promissory Oath*, in particular; and, wherein the Nature of an Obligation consists: And, shall, (God willing), in my next Prelection, proceed to the Prosecution of the Remainder, in the Order and Method, which I first proposed.

THE

THE
SECOND LECTURE.

I. **H**AVING, in the former Lecture, explained, What, *an Oath*, in general, is; what, a *promissory Oath*, in particular; and, wherein, the *Nature of an Obligation* consists; I shall proceed, pursuant to my Promise, in the next Place, to propound some *Hypotheses*, or *Presumptions*, adapted to our *Institute*, as *Foundations*; or, (if you had rather call them so,) as *Rules* and *Criteria* of the whole ensuing Disquisition; from which the *Determinations* of most doubtful Cases are to be drawn; and, to which they are to be reduced. But, there is one Thing, before I proceed to the doing hereof, which, at this Juncture, I do not so much intreat you to pardon, (though, indeed, I would do that too, had I the least Suspicion of your Humanity; or, were not the Matter itself extremely just), as, to beg leave only, to forewarn you thereof; namely, that, I have laid it down as a *Rule*, while I can find Words sufficient to express the *Meaning* of the Matter of which I treat, not to take any further Pains concerning them; much less, to be over-solicitous about *Purity* of Diction; and, least of all, about *Elegance* of Stile. No; let those mind such Things, who

who are more at leisure, and have an Inclination to give themselves unnecessary Trouble. For my Part, I frequently use to call to Mind, in Conversation with my Friends; (and, indeed, not without some *Mirth* and *Laughter*), what great Pains *Paulus Cortesius*, a Man, otherwise not unlearned, took, to render himself more impertinent and silly; who, in writing *Comments* on the *Four Books of the Sentences*, after *Thomas Aquinas*, *others*, and many others, being, forsooth, quite tired and displeased, with the Words commonly received and approved of in the *Schools*, as not *Ciceronian*, or eloquent enough, had rather, (nice and squeamish Man!) instead of the Word, *Church*, make use of the Word, *Senate*; instead of *Ecclesiastical Laws*; of *Decrees of the Senate*; instead of *Predestination*, of *Presignation*; instead of *Ordination* of *Priests*, of *Initiation*; instead of *Angels*, of *Genii*; instead of *Bishops*, of *Flamines*; with which, and many other such Flowers of Rhetoric, he chequered over all his Works. Under the same Distemper, I find, *Peter Bembo* the Cardinal, *Sebastian Castalio*, and some few others, also laboured: However, they were somewhat more moderate in their Use of such Terms. But, we have no Inclination; nor, indeed, is it possible for us to be so eloquent. It is pardonable in an *Orator*, and, will even redound to his Praise, to be nice and critical in his Words; it being one of his greatest Perfections, to speak, not only with Propriety and Clearness,

ness, but also, with *Purity* and *Beauty* of Expression; Yea, it will, sometimes, *not* misbecome him, as he proceeds in his Discourse, to make use of a *florid* and *embroidered* Stile. But, a *fine* and *ornamented* Discourse becomes, either a *Philosopher*, or a *Divine*; especially, in *scholastic* Meditations, and *knotty* Controversies, in the *same* Manner, that *beautiful* Furniture, or *studded* Trappings, become the *ploughing* Steer. The *Subject*, upon which we bestow our Pains, content, with being made out, and taught, is so far from requiring Ornament, that it *cannot* bear it. For, it is not the *same* Thing to be employed in the *Rostrum*, as in the *Schools*: No; to enjoy an *open* Field, in which an Oration may exult, and *copiously* display all the Riches of Eloquence, is *widely* different from being held intangled in a *Place* full of Briars and Brambles; from whence, if a Man can, by *any* Means, extricate himself without Blood and Wounds, he may be *justly* said, to have gained a glorious Triumph. But, what need I take *so much* Pains upon *this* Point? If I *frequently* make use of *such* Words and Expressions, as have been received and allowed of in *Treatises* of *this* Nature, as, I certainly must; I make *no* doubt, but, I shall *sooner* obtain your Pardon, upon *that* Score, than, I fear, I shall, for making *so long* an Apology for it. I shall, therefore, forbear to intreat you *further*,

ther, on this Account, and hasten to the (7) Hypotheses, which I proposed.

2. Of which, let *This* be the *First*, “*That above all Things, Simplicity is necessary and becoming in an Oath,*” that is, the *Nature* and *Obligation* of an *Oath* are *such*, that, whosoever engages himself, by *so sacred a Bond*, to the Performance of any Thing, is, by the *Religion* of *such Oath*, to *all* Intents and Purposes, bound, not only seriously, and with all his Heart to intend, but also, as much as lies in his Power, earnestly to endeavour, faithfully to perform all that he has promised, without any Craft, Fraud, Guile, or Diffimulation. Cicero in *This*, as in most other Cases of *this Kind*, very justly observes, (a) “*That, whatsoever you positively promise, as in the Presence of God, or, with a religious Affirmation; That, you must certainly stand to, and perform.*” Whoever does otherwise, and does not take care, in *Fact*, to perform *That*, to which he bound himself by *Oath*, has, in the Opinion of *Moses* in the *Text*, polluted, or broke his *Word*; that is, has *basely*, and *unworthily* defiled, or violated a *Thing sacred*, and not rashly to be prophaned; and is, consequently, *guilty* either of

(a) Lib. 3. Offic.

(7) *Thesis*, is a general Proposition which a Person advances, and offers to maintain. Every Proposition may be divided into *Thesis* and *Hypothesis*. *Thesis*, contains the Thing affirmed, or denied; and *Hypothesis*, the Conditions of the Affirmation or Negation.
open,

open, or concealed Perjury. For, since it is commonly said, that, there are *three Kinds of Perjury*, of which, the *first* is almost peculiar to the *Assertory Kind of Oath*; as, when a Man swears to the Truth of any Thing, which he either imagines to be false; or, at least, is in Doubt, whether it be true, or, not: And, of the other Two (which relate to the *promissory Oath*), the next is, when a Man promises that, by Oath, which he does not really intend to perform: And the Third, when he does not endeavour to accomplish what he has promised, and intended: I say, it does not signify much, with Regard to the Nature or Guilt of Perjury, especially in the Court of Conscience, whether any of the Three be taken openly, and barefacedly; or, disssemblingly and hypocritically. It is true, indeed, the Former is a Sign of a wicked; and the latter, of a false and treacherous Heart; but, both, of them, unless (b) Fraud deserves the greater Hatred and Detestation, are equally (c) abominated by That most holy God, “ who loves the simple in Heart, and desires (d) Truth in the inward Parts. But, as “ (e) to such as turn Aside into their crooked Paths, that is, the Hypocrites and the Deceitful,

(b) Cicero de Offic. L. 1.

(c) *ῥῆδος μὴδὲ μὴδὲ, μὴδ' ἀπάτην, μὴδὲ τι κίβδηλον γίνεσθαι καλῶμεθα*. *θεῶν, μὴτι λόγῳ, μὴτ' ἔργῳ, πράξειν ὁ μὴ διομίσγατος εἶναι μίλλειν.* Plato de Leg. 11.

(d) Psal. li. 6.

(e) Psal. cxxv. ult.

"The Lord shall lead them forth with the Workers of Iniquity," that is, He will regard them in no more favourable a Light, than the openly Impious and Prophane.

3. Now, there are two Kinds of Dissimulation, that are repugnant to, or inconsistent with, this Simplicity of an Oath; one, which is antecedent to, or goes before, the Act of Swearing; or else, accompanies and attends it: The other, which is consequent to, and follows, it: of which, though the former be the worse, yet, neither of them are free from Perjury. David seems to have described and comprehended both of these, in two different, but almost parallel Places, namely, in the 15th and 24th Psalms. In the Latter of which, when this Question is put, (f) "Who shall ascend into the Hill of the Lord? This Answer, among others, is given, "He that hath not sworn deceitfully, that is, who hath not sworn with an Intention to deceive: where, all Dissimulation, about the Time, and in the Act itself of swearing, is excluded. In the former, to the like Question, (g) Lord, who shall abide in thy Tabernacle? Among others, this Answer, not very different from the Former, is made, namely, "He that sweareth to his own Hurt, and changeth not; that is, who, after he has bound himself by Oath, had rather perform, though with great Damage to himself, what he

(f) Psal. xxiv. 3, 4.

(g) Psal. xv. 14.

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had inconveniently Sworn, than violate his Faith upon the Prospect of any temporal Advantage; where, all *Disimulation*, after swearing, is evidently excluded. The greatest Part, therefore, of those Men in the present Age, who, not only are not afraid, *prolixly*, and without any set Form of Words, to swear to every Thing, let it be what it will, without *Preamble*, or *Ceremony*, that is proposed to them by those in whose Power it is to do them Prejudice; But, who also, rather seem to themselves to be the only wise Men, and laugh, not without some Contempt and Disdain, at the *Simplicity* and *vain Fears* of such, as, lest they should injure and offend their Consciences, are so scrupulous, forsooth, as without *material* Reasons, to sollicite and press those for *written Forms*, who are impowered to prescribe them: I say, these Men do not seem to me to consider; at least, not *seriously* to consider *this* Matter; and *that*, more especially, since, all this Time, they think themselves *secure* and *free*, both from the *Crime* and *Danger* of *Perjury*; and imagine, they have taken excellent Care both of themselves and of their Consciences, if, at the very Time of swearing, they can, according to the Custom of the *Jesuits*, make any Shift to defend or excuse themselves, either by the Help of some *tacit Equivocation*, or *mental Reservation*, or of some *subtil strained Interpretation* quite foreign to their Words. Nay, they think themselves

secure,

secure, if they can, by any Means, even after they have sworn, discover a Hole out of which to creep, or any artificial Evasion, which they look upon as a wise Remedy, by which they may in such Manner elude their Oath, that, though the Words be preserved, yet the Meaning and Intent thereof is evaded by some Sophism, and the whole Force thereof utterly enervated and destroyed. But, the antient Christians knew nothing of this Divinity. Nay, the wiser Heathens were utter Strangers to this Kind of moral Philosophy. Among the former, St. Augustine thought very differently, when he said, "*Those Men are perjured, who, notwithstanding their Observation of the Words, yet deceive the Expectation of those to whom they have Sworn.*" And, among the latter, (b) Cicero thought much otherwise, when he affirmed, (8) "*That, whatsoever*

(b) Lib. 3. de Offic.

(8) The Translators of Puffendorf, (B. 4. Ch. 2. Sec. 15.) render this Passage thus, "That, what is sworn agreeable to the Mind and Intention of him who requires the Oath, ought strictly to be performed; but, what is not, may, without Perjury, be omitted;" that is, If a Man happens to misunderstand the Party who puts him to his Oath, so as to swear in a different Sense from what the other conceives, he is not perjured by Non-performance; For, since the other Person had a contrary Meaning, he must be supposed not to have accepted of this Proposal made upon Oath by the Juror; and, without Acceptance, there ariseth no Obligation from a Promise; for, it is not, as Tully goes on, always Perjury to swear false: that is, to assert by Oath, thro' some Mistake, what is really otherwise. "But, you are then perjured, when you fail in making good what you swear, or animi tui sententia (as the Form is

“ever is sworn in such Manner, as the Mind and Con-
 “science of him that swears conceives necessary and
 “fit

“in our common Practice), according to your real Sentiments and Per-
 “swasion.” Upon which the learned Mr. Barbeyrac observes, that
 Cicero’s Latin is, “Quod enim ita juratum est—ut mens concii-
 “peret fieri oportere, id servandum est; quod aliter, id si non fe-
 “ceris, nullum est perjurium. Non enim falsum jurare, perjurare
 “est: Sed quod ex animi tui sententia juraris, sicut verbis concii-
 “pitur more nostro, id non facere perjurium est.” Grotius, says
 he, and our Author (Puffendorf), followed the ordinary Editions in
 the first Words, which import, *ut mens Deferentis conciperet fieri*
oportere; But, seeing the Manuscripts acknowledge the Word “De-
 “ferentis, which is not there, as Aldus Minucius testifies; the Se-
 quel of the Discourse, shews plainly enough, as I think, that it is
 a Gloss which has been thrust into the Text by some Body that
 did not attend to Cicero’s Reasoning. The Example which is found
 in the following Words, will not permit us to doubt, but that he
 treats of him that swears, and not of him that imposeth the Oath.
 A Corsaire, without Doubt, intends to pay what he has promised
 with an Oath; or, why doth he swear? ’Tis then, *mens Jurantis*,
 and not *mens Deferentis*, in this Place. Whether this Criticism of the
 learned Barbeyrac’s be true, or not with Regard to Cicero’s Reasoning;
 ’tis certain, others think the Meaning of the learned Author of these
 Lectures to be different; which, they apprehend, may appear, not
 only from other Passages in these Lectures, but more particularly
 from the first Section of the fourth Lecture, and the following Pas-
 sage, (in his Case of the Engagement), where he says, “I take that
 “for a clear Truth, that all Promises and Assurances, wherein Faith
 “is required to be given to another, ought to be understood, ad
 “mentem Imponentis, according to the Mind and Meaning of him to
 “whom the Faith is to be given; so far forth, as the Meaning may
 “reasonably appear, by the Nature of the Matter about which it
 “is Conversant, and such Signification of the Words whereby it is
 “expressed, as according to the ordinary Use of Speech amongst
 “Men, agreeth best thereunto. The Reason whereof, is, be-
 “cause, the Faith so required to be given, is intended to the Be-
 “hoof, and for the Interest of him that requireth it; namely, to
 “the End, he may have the better Assurance from him that giveth
 “the Faith, that what is promised, shall be accordingly perform-
 “ed: Which Assurance he cannot have, if, after his Meaning suf-
 “ficiently

“fit to be done; That ought most inviolably to be
“observed and performed.”

4. But, lest I should seem, either to declaim, or to contend on the Foot of Authority alone, I shall offer several Reasons, to prove, and confirm, that, Perjury is not avoided or escaped by either Kind of Dissimulation before mentioned. The first Reason is taken from those many Places of Scripture, in which the Simplicity of the Heart is not only required in every Part of divine Worship, and the common Duties of Life; but also, and more especially, in Contracts, Promises, Vows, and Oaths. Not to mention any other, it is, in the Text before us, required in express Words from the Person swearing, “That, he should do according
“to all that proceedeth out of his Mouth:—that he
“should do according to all;” that is, that, he should, at the Time of swearing, really and sincerely, both intend to do, and afterwards, really, and sincerely, as much as lies in his Power, endeavour to perform, “according to all that proceedeth out of his Mouth;” that is, according to that Sense, which the Words spoken by him, pursuant to the common and received Manner of

“sufficiently declared by the Words, it should yet be at the Liberty
“of the Promiser, to reserve another secret Meaning in his own
“Breast, differing therefrom.” And yet, Doctor Cockman, in his Translation of Tully’s Offices, renders this Passage thus; viz.
“Whatever you swear in such a Manner, as that your Conscience
“tells you it ought to be done, you are bound most inviolably to
“perform it.” Let the Reader chuse which Sense he pleases.

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speaking, are apt to *beget*, and *produce*, in the Minds of the Hearers; and, *not* according to *that* Sense which *he himself*, perhaps, deceitfully *intended*, and *reserved tacitly*, within himself in the Thoughts of his *own Mind*, at the *Instant* of swearing; to *which Purpose* is *that* Saying, so often quoted from St. (i) *Isidore*, produced, "That, let the Person who swears use what Art he will with Regard to the Words of his Oath; yet, God, who is the Witness of Conscience, takes them in the same Sense, in which he understands them, to whom the Oath is sworn:" No; nor yet, according to *that* Sense, which the Person so sworn, has, after he begins to repent him of what he has done, devised and invented anew, by Way of *Salvo*, or, for *Fashion-sake*; because, not done with an Intent, *sincerely* and *honestly* to fulfill and acquit himself, as he ought, of the Promise made in his Oath; but only, that he may *seemingly* appear to himself, and others, in *some Sort*, to have discharged his Duty; and, by *such Artifice*, to have *very cautiously*, and *providently*, avoided and escaped the Crime of *Perjury*.

5. *The second Reason* is drawn from the Example of *God himself*, whom the *Apostle*, in the 6th Ch. to the *Hebrews*, describes as *willing*, for *this Reason*, to confirm his Promises made to the

(i) Lib. 2. Sent. & habet. 21. qu. 5. c. quacunq;

Faithful by an Oath, “ *That, the Immutability of his Counsel, in the Performance of what he had sworn to do, might more (k) abundantly, that is, in as full and ample a Manner as possible, and in such Manner as that there might be no further Room for doubting, be declared and testified to them; And, all this, to the End, that, those who should believe, might have a strong Consolation, and firm Hope, or Trust in him; which, notwithstanding, they could not have, if, in those Things which God had promised by Oath, it were possible for him to Lye, that is, (as (l) learned Men explain the Force and Import of that Word,) If God could deceive those to whom he had sworn, by entirely frustrating all their Hopes and Expectations. But, he would certainly deceive and frustrate, both the Hopes of Believers, and the Consolation arising from such Hopes in Him; if, when he had sworn to them, he had, either not intended to perform what he had promised; or if, changing afterwards his Design, he would not perform it in the due and proper Season; and that too, in the very same Sense, in which it was fit and reasonable that such Promises should, according to the Tenor of the Words, be understood by them. “ The (m) Lord, hath sworn, and will not repent. The*

(k) Heb. vi. 17, 18.

(l) V. Grot. 2. de jur. Bell. 13.

(m) Psal. cx. 4.

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“ Lord hath sworn in Truth unto (n) David, and
“ he will not turn from it.

6. *The third Reason* is taken from the *Nature of Truth*; which is the *First* and most Remarkable of those *Three* celebrated and well-known *Conditions*, or *Qualifications* of an *Oath*, recorded by the Prophet (o) *Jeremiah*; inculcated by all; and, by the *Schoolmen* called, “ *The three Companions* or *Attendants* of an *Oath*, namely, *Truth*, *Judgment*, and *Justice*. Now, not only that which is *false*, but also that which is *feigned*; not only a *manifest* and *bare Lye*, but also, a *secret*, and *howsoever disguised one*, is repugnant to *such Truth*. He, certainly, *defiles* or *profanes* his *Word* with a *Lye*, who tells his *Neighbour* a *Falseness*, and appears to have deceived him in *that Hope*, which he had *Reason* to have conceived and expected from his *Words*. Since, therefore, a *Lye* cannot be avoided by any *Disimulation* of either *Kind*, provided, it be *our Fault*, that our *Neighbour* is deceived by giving *Credit* to *our Words*; It is likewise certain, that, *Perjury* cannot be avoided, if it be *our Fault*, that a *Man* is *deceived* by giving *Credit* to *our Oath*; *Perjury* being nothing else but “ a *Lye confirmed by an Oath*.” So that, *Perjury* is *exactly* the *same* in *Respect* of an *Oath taken*, that a *Lye* is in *Respect* of a *bare Promise*.

(n) Pſal. cxxxii. 11.

(o) Jerem. iv. 2.

7. *The fourth Reason* is taken from the proper End of an Oath, which, as is sufficiently evident from what has been already said in our Explanation of the Definition of an Oath, is, *the Confirmation of a doubtful Matter*; that is, "That, the greatest Certainty should be obtained concerning Things otherwise Uncertain and depending on human Faith, or the Testimony of Man, that is possible to be had in human Affairs." For, an Oath is appointed by God, as appears from the very Light of Nature, in order to remedy all human Defects in the Search of Truth; and, to be the ultimate Resort among Mortals for the Defence thereof; as often as all other Kinds of Proof should appear defective. But, this End would be quite defeated and destroyed; nor, could Men have any certain Assurance, should it be free for the Swearer at his Pleasure, as it were, to cut the very Sinews of what he expresses in Words in order to create Belief, either, by some tacit Ambiguity at the Time of swearing; or, by some new-invented, and, as it were, posthumous Comment or Device, after he has sworn, in such Manner, as to make such Words lose all their Efficacy and Force, and render them altogether vain and ineffectual. If, either of these Things might lawfully be done; then, an Oath would not be (q) the End, but the Beginning of Strife; and, would rather afford

(p) V. Præl. 1. N. 6.

(q) Heb. vi. 16.

a Handle for *new* Contradictions and Contests, than mitigate, or determine the *Old*. If *such* a Door as this were once opened, what could be imagined *so false*, but that in Defence of it, some *Shift* or *Evasion* may be invented and found out to free a Man from the *Imputation* of Falsehood? In the mean Time, how very perverse is it, That, *what* is *instituted* by the *most wise God*, in *Aid* and *Succour* of *Faith*, should be turned by *wicked Men* into an *Instrument* of *Deceit* and *Falsehood*, according to *that* Saying of *Erasmus*, (r) *An Oath is a very artful and cunning Means, or Method of deceiving?* So that, unless a Man had, indeed, rather make use of the *Institution* of *God* to a *different Purpose* from the *End* for which it was ordained, (which *no pious* and *good Man* would *readily* do), *That*, which is the *End* of an *Oath*, ought also to be the *End* of him that *swears* it. Now, *that End*, is, to give *such Assurance* to the *Hearer*, as that *he* may be rendered *more certain* and *secure* concerning the *Truth* of a *Matter* which was *before doubtful*. But, *he* who *dissembles*, endeavours to beget *false* Belief in his *Hearers*; and so, does not only *suffer* another to be *deceived*, (which yet is (s) *contrary to Charity*, since it is in his *Power*, and, is his *Duty* to prevent it), but also *intends himself*

(r) Eras. 11. Chil. ex Simocrat. Epist.

(s) Perjurium est nequitèr decipere Credentem. 22. qu. 2. c. in dolo.

to deceive him; which, beside its being *contrary to all Justice and Honesty*, is, likewise, *closely connected with the greatest Injury to God, and Contempt of the Divine Name*. And, indeed, it hardly appears to me, that, any *other Kind of Perjury* is more diametrically opposite, either to the Scope, or Words themselves, of the *third Precept of the Decalogue*, (of *not taking the Name of God in vain*), than *what* arises from *such Dissimulation*. For, as the Word, "*Vanity*", properly and adequately comprehends *all that*, which is, in *any* respect, *false*; so does it, in a *very peculiar and proper Manner*, signify *that*, which is, in *such* manner *false*, as yet to bear *some Shew, or Appearance of Truth*. So that, should any one endeavour to define the Nature and Essence of *Vanity*, (though it be an *imaginary Being* only, and has no *true Essence*); yet, by a *certain Analogy* to a *real Being*, he could not do it better, than by framing to himself, in the Imagination of his Mind, a certain Idea of a Thing composed of *nothing*, as of its *Matter*; and, of a *Lie*, as of its *Form*. Thus, *that Hope*, which, for *some Time*, feeds and supports itself by a *Lie*; and yet, is *at length* frustrated, and comes to *nothing*, is no other than "*a vain Hope*." And, in the present Case, whoever promises, that, any Thing shall certainly come to pass, or be done, having taken the *Name of God in Confirmation* of the Truth thereof, which yet, entirely

ly comes to nothing; that which was so promised being, either not intended, or not performed; such Person, directly and literally takes the Name of God in vain; violates the Divine Precept; and, is guilty of (9) Perjury, the worst of Crimes.

And

(9) Perjury, is a Crime so repugnant to all the Ideas that Mankind have ever formed of God, and, so utterly subversive of public Order, that, it has been held in the utmost Abhorrence, and branded with signal Infamy, in every Age and Nation. The true Nature of an Oath is this: An Appeal to God, as the supreme Judge of Equity, in all Controversies about Right and Wrong, as the Friend and Patron of the Injured, and the severe Punisher of the Injurious; it is an Appeal to his infinite Knowledge, as a Witness to our Integrity, and an Imprecation of his just and heavy Vengeance upon ourselves, if we are knowingly and deliberately insincere. The Man, therefore, who swears positively to a Falsehood; or, takes an Oath, which he is determined to violate; or who, upon any Temptation, recedes from what he has solemnly and warrantably sworn, must not only be entirely destitute of the least Spark, and most languid Impression, of Religion; but, if he is not a speculative Atheist, must act in direct Contempt and Defiance of God. He must be a downright Monster in Nature, deriding the Justice of the Deity, and challenging Omnipotence to do its worst. And, moreover, the Crime of Perjury may not only be attended, in particular Cases, with extremely injurious Consequences; but, as Oaths have, in almost all Communities, the last Determination in Points of social Justice, whether respecting Life or Property, and are the principal Fences of Government itself; beside introducing present and temporary Inconveniences, it manifestly tends to the Overthrow of all Right, and to the Confusion and total Dissolution of all Societies. So that, there is no possible Villainy, but what we may fairly suppose the Perjured to be capable of committing without remorse: (or, what those, who swallow Oaths without Consideration, or allow themselves to frame Equivocations, and mental Reserves, are not preparing themselves for the Commission of); because, they neither fear God, nor regard Man, and are absolutely divested of all Sentiments that are either generous, virtuous, or humane.

Hence, it is no Wonder, that one of the ten Precepts, or Commands of the Decalogue should be levelled against Perjury. Thou shalt not take the Name of the Lord thy God in vain, that is, Thou shalt

And thus, in my Apprehension, is the first Hypothesis, concerning the Simplicity of an Oath, sufficiently established and confirmed.

8. The

Thou shalt not bring, or apply the Name of God to a Falsehood; or, as *Josephus* renders it, *Thou shalt not adjure God to a false Thing*; which our Saviour explains yet more clearly, "*Thou shalt not forswear thyself*." So that, the primary, if not the sole Intention of this Commandment, is, to forbid the great and heinous Sin of Perjury. And, to deter Men the more from this it is, that a severe Threatning is there added, "*For, the Lord will not hold him guiltless that taketh his Name in vain*," that is, he will punish such a one particularly, and, with the utmost Severity. And, 'tis very observable, that there is no Threatning added to any other Commandment, but to this and the second, intimating to us, that, next to Idolatry and the Worship of a false God, Perjury is one of the greatest Affronts that can possibly be offered to the divine Majesty. This is one of those Sins which cry so loud to Heaven, as to quicken the Pace of God's Judgments. Thus, says God, by his Prophet *Malachi*, in the 3d Ch. and 9th Ver. "*I will come near to you in Judgment, and be a swift Witness against the Swearer*." Of this also, the Prophet *Zachariab*, speaking of the Curse that goeth over the Face of the whole Earth, says, "*God will bring it forth, and it shall enter into the House of him that sweareth falsely by the Name of God, and shall remain in the Midst of his House, and shall consume it with the Timber thereof, and the Stones thereof. It shall remain in the Midst of his House, and shall consume it*." (Dr. Foster, Vol. IV. p. 104.)

Now, if Perjury be so high an Affront to God, as being contrary to his Nature, Attributes, and express Command; as well as of the most injurious Consequence to Mankind; ought not every Person to be exceedingly cautious and careful, how, and on what Occasions, he takes an Oath, lest he fall into the guilt of this horrid Sin? When we are lawfully called upon to swear; then, certainly, we may, and are obliged to do it; but surely, it greatly concerns us to consider well, what we are going to do, and to act with the greatest Reverence and Sincerity in the Performance of all our Oaths.—What, then, can be said of those, who enter into public Treaties, and seal them with the most solemn Oaths; and yet, violate and counter-act them, whenever an interesting Opportunity offers? What can be said of those Protestant Subjects, who break through repeated Oaths of Allegiance, and enter into Conspiracies, Treasons, and Rebellions, against their lawful Sovereign, in order to advance a bigotted popish Pretender

8. *The second Hypothesis* follows, much of the *same Nature* with the former, which relates to the *just Interpretation* of an *Oath*, and is briefly this; *That, the Obligation of an Oath is, a Matter of strict Right*; or, to be interpreted *strictly*. Here I understand the Words, *strict Right*, not in the Sense which we often meet with in the Writings of the *Lawyers*, for *that Rigour of the Law*, which they call, "*the Height of Justice*, and is opposed to *Equity*, by which, as the Prophet *Amos* speaks (t) "*Justice is turned into Gall*;" and, which is generally so connected, or interwoven with *Injury*, that *this Expression, The Strictest Justice is the highest Injury*, is almost become "*a Proverb*"; but, in a Sense somewhat more mild; namely, for an *Interpretation of Law*, so just, and so circumscribed within its own proper Bounds, that the *Words of the Law*

(t) *Amos vi. 12.*

Pretender to his Throne? What can be said of those *Judges and Juries*, by whom *innocent Persons* often *lose their Lives*, and *honest Men* their *Estates*, or *Reputations*? What can be said of *gross Numbers of Witnesses*, that often appear, with *Evidence contrary* to each other; where it is certain, that the *Testimony on one Side* must be false? Or, what can be said of those *Revenue-Officers*, who, at once, *perjure themselves*, and *cheat the Government* of what is *justly due* to it; and yet, think to excuse themselves, by calling their *sacred Engagements*, "*only Custom-House-Oaths*, and mere *Matters of Form*?" But, what can be said of *all these*, and many other open and concealed *Violators of their Oaths*; but, that, *God must have a Controversy with the Land* for the *Lying and Swearing*, that is in it? Shall he not visit for these Things? Shall not his Soul be avenged on such a People as this? Shall he not sweep them with the *Beeson of Destruction*?

may

may not be stretched *further* than is reasonable and proper, in order to excuse, or favour *any* Party; nor be *strained* so, as to be made *subservient* to the *Actions*, or *Advantage* of *any* Person. In a Word, *strict Right* is *here* understood in *such* Manner, as *not* to exclude *that Interpretation* which is tempered with *Equity*; but so, as to exclude *that Interpretation*, which is corrupted by *Favour*. Now, since, to *interpret* is nothing else, but to explain *something* that is, either *obscure*, or *doubtful* in the Matter under Consideration, we must know, that there may be a *Three-fold Exposition*, or *Interpretation* given of the *same* Thing; namely, a *rigid*, a *favourable*, and a *just* one. The *rigid* and *favourable Interpretations* are the *two* Extremes; and, *both* of them, like *most* Extremes, are *faulty* and *vitious*. And, as there is, for the *most* Part, a certain *Coincidence of Extremes*; but, so unfortunate a one, that, while they recede on *both* Sides, from the *Medium* or *Mean*, they *always* meet in *that* which is *bad*; Yea, for the *most* Part, in *that* which is *worst*: So, an *over-rigid* and an *over-favourable Interpretation* of *Law* meet or agree in *this*, that, *both* of them, by an *unjust Respect* of Persons, do, in some Measure, offer Violence to the *Law*, by *wresting* it, through an *over-subtil* Exposition, to the Advantage of *one* Party, and the Grievance of *another*; but, with *this* Difference, that *he* who acts out of *Hatred*

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tred to a Party, always urges the more rigid; but, he, who is led by Affection, always follows the more favourable Interpretation. Now, that Interpretation is just, which, consisting in the Middle or Mean, betwixt both these Extremes, traces the true and genuine Sense, without any respect of Persons, not only from natural Equity and Justice, but from the Words themselves so far as they are agreeable to Equity and Justice. And, this Interpretation, if it can be made sufficiently evident from the Words, ought, in every Thing, to be simply retained and followed. But, because it may, and often does come to pass, that a Controversy may arise concerning the proper and natural Sense of Laws, and other Things that want Interpretation, it must be observed, that, where a just Interpretation cannot be had, by Reason of the Doubtfulness of the Matter; then, there must of Necessity, (if I may be allowed the Expression), a certain (u) prudential Latitude be granted, even to this moderate Manner of Interpretation. Thus, Moralists deny, that, the Mediocrity or Mean of Virtue is fixed in an indivisible Point; or, that it consists in an (10) Arithmetical; but, on the Contrary, affirm; that,

(u) ὡς ὁφείματος καὶ ὁπίου. Aristot. 2. Ethic. 6.

(10) *Proportion*, is the Habitude, or Relation of two Ratios, when compared together; as Ratio is of two Quantities. This is *Arithmetical*, or *geometrical*. *Arithmetical Proportion* is, the Equality of two or more arithmetical Ratios, or, the Equality of Difference between three or more several Quantities. Thus, 1, 2, 3, and 2, 5, 8, 11, 14, are in *arithmetical Proportion*; because, there is the same

it consists in a geometrical Proportion. Therefore, in a doubtful Law, sometimes the *stricter*, and sometimes the *milder Interpretation* supplies the Place of a *just Interpretation*, according to the *Nature* of the *Matter* in Hand; of which, the *strict Interpretation*, being the *more* remote from the *favourable*, inclines *more* towards the *Rigid*; but, the *Mild*, approaching *nearer* to the *Favourable*, declines the *more* from the *Rigid*. Thus, in *Morals*, "That *Virtue*, which lies in " the *Middle* betwixt *Avarice* and *Prodigality*, " is, in *Proportion* to its *Distance* from *either* " of the *Extremes*, called by the Name of " *Liberality*, or *Frugality*." There are, therefore, *some* Things so ordained by *Nature*, that, by a *certain Privilege* peculiar to them, they demand a *mild Interpretation* to be allowed them; that is, *such* as should not be confined within a narrow *Compas*s of Words; but, to use the Expression of (y) *Cicero*, *such* as should be allowed *greater Freedom*, *Liberty*, and *Scope*; *such*, for instance, as a *testamentary Matter* is deemed and allowed to be, according to the *Laws* of our

(x) *Cicero pro Cluent.*

same Difference betwixt the Number compared, which are, 1 to 2, and 2 to 3, or 2 to 5, and 5 to 8, &c.

Geometrical Proportion, is the Quality of two geometrical Ratios, or Comparisons of two Couples of Quantities. Thus, 4 : 8 :: 12, are in geometrical Proportion; the Ratio of 4 and 8 being equal to that of 12 and 24; that is, 4 is contained as often in 8, as 12 is in 24; and, a Series, or Progression of more than four geometrical Proportionals is called a " *Geometrical Progression*."

own Country. So, according to the *Law of Charity*, the *Expressions* or *Actions* of other Men, especially, of *Princes*, *Parents*, and other *Governors*; and likewise, the *Writings* of *pious* and *learned* Men, (unless, where there is *very just Cause of Suspicion* to the Contrary), are to be softened by a *mild Interpretation*, agreeably to that common Saying, "*That, doubtful Things are to be interpreted on the more favourable Side.*" But, there are a great many other Things, such as *Privileges*, *Bonds for Money*, and *most of those Things* that induce a *legal*, or *rightful Obligation*, and, among these, an *Oath*, in which, whensoever *any Doubt* arises concerning the *just Sense* of them; it is far *better*, and *more agreeable* to the *Nature* of them, to make use of the *stricter*, than of the *milder Interpretation*.

9. When, therefore, I affirm, *That, an Oath is a Matter of strict Right: That Expression* must be *thus* understood; namely, "*That, the Sense, or Intention of an Oath, when 'tis sufficiently manifest from the Words, must involuntarily be kept to, and observed;*" but, where the *Meaning, or Intent* is *doubtful*, there, *every one* of us must carefully beware, that *we* do not too much indulge ourselves and our *Affections*, or allow ourselves too great a *Latitude*, or unlimited *Liberty of Interpretation*, in order, the *more easily* to exempt or free ourselves from the *Bond* of the *Oath*, by which we are bound; or,
That

That we do *not* devise *any other* Sense of the *Oath* taken by us, or of *any Clause* thereof, for the Sake of our *own* private Interest, or Advantage, than what *every other pious and prudent* Man, (who is *unprejudiced* in his Judgment, that is, who is *no Way* interested therein), might, *easily*, and without *any Force*, deduce from, and strike out of, the *Words themselves*. The *Reason* of which is *Twofold*. The *one*, in respect of *others*, that is, for fear of *Scandal*, lest any weaker Person, led by *our Example*, should think he might *lawfully* do *what* he sees done by *us*, though he be, at the *same Time*, ignorant of those *Subtilties* and *nice Distinctions*, by which alone we use to defend and screen ourselves from the *Guilt of Perjury*. The *other*, in respect of *ourselves*, that is, for fear of *Perjury*, of which most grievous Crime we are *undoubtedly* Guilty, if we should chance to be *deceived* in that *milder Interpretation*, which induced and emboldened us to swear. The *Reason* of *this* is founded on that general and very useful *Rule*, which commands us, "*in doubtful Matters always to take the safer Side*". But, it is *safer* not to swear, where the Words of the *Oath* proposed, according to their *common and obvious* Sense, seem to contain something *unlawful* in them, than, by a *loose Interpretation*, to soften them in *such Manner* for our *own Purpose*, as, that we may the *more* securely swear to, or swallow them down: For-

asmuch, as 'tis evident, that, *such Oath* may be refused, without Danger of *Perjury*; but, it does not appear, that it may be taken, either without some Fear, or Danger of it.

10. Yet, notwithstanding *this*, we must, on the other Side, take great Care, that, this *strict Interpretation* of which we are speaking do not pass, or degenerate, into a rigid one. For, that which the *Lawyers* assert concerning *Privileges*, obtains also, and that universally, in all other Things of the like Nature; but, more especially in *Oaths*; namely, "That, they ought not to be either too strictly, or too loosely interpreted." When, therefore, we affirm, "That an Oath is Matter of *strict Right*", it must not be understood in any other Sense than *this*; that, all those *Exceptions*, or *Conditions* may, and ought to be understood in every Oath, how simply soever expressed and without Exception, which, by common Right, or Custom, use to be understood in order to the rendering of an Oath, obligatory. Of which, those that follow are the Chief, to which, perhaps, the greatest Part of the Rest may be reduced. In the first Place, this Exception or Condition must be understood, "If God shall permit, according to that Saying of St. James (2) If the Lord will, we shall live, and do this, or that. Whence it is, that, should Caius swear to Titius, that, he would be in Lon-

(2) Jam. iv.

don on the first Day of January, and would then bring with him the Money which he owes him; yet, should he, at that very Time, be seized with, and lie ill of, some grievous Sicknefs; or, be robbed of the Money by Highwaymen on the Road; in such Cases, he would not be guilty of Perjury. The Reason is, because, since all Things are subject to the Will and Pleasure of Divine Providence; and, since it is not in the Power of any Man whatsoever to answer for all future Casualties, or dispose of future Events; he, who does all that lies in his Power to fulfil what he has promised, has fairly acquitted himself of his Oath. For, since there can be no Obligation to a Thing impossible, as you shall presently hear; every Oath ought, pursuant to the common Rule, or Custom, to be understood with this Clause (a), Unless it should otherwise please God; or, with some other Clause of the like import. Secondly, This Exception, or Condition, must also be understood, "provided, it be lawful; because, there can be no Obligation to the Performance of a Thing unlawful. Thus, should a Man swear indefinitely to observe all the Statutes and Customs of some Community, or Corporation; He is, notwithstanding, not obliged to observe any other, than such only as are lawful and honest. Thirdly, This Condition also must be under-

(a) In omni Voto vel Sacramento intelliguntur hujusmodi generales Conditiones, si Deus voluerit, si vixero, si potero. Gloss. ad 22. qu. 2. c. B. Paulus.

derstood, *(b)* *Provided, the Right or Power of the Superior be preserved.* Hence it is, that, should a Son swear he would do *something in itself lawful*; but, the Father, being ignorant of the Matter, should lay his Commands upon him to do some *other* Thing which might *obstruct* the Performance of *what* he had sworn; the Son, in *such* Case, is *not* obliged to fulfill, or make good his Oath; because, *he* is bound, by the *divine natural* Law, to *obey* the Command of his Father. He likewise, who has sworn not to stir out of his House; yet, when *cited* by a *lawful* Judge to appear before him, is obliged to go, notwithstanding his Oath. The Reason is, because, the *Act* of *one* Person ought *not* to Prejudice the *Right* of *another*. Fourthly, *This Condition* must also be understood; namely, *Provided, Things stand thus*; that is, *provided, Things continue in the same State and Condition* in which they *now* are. Hence, *he*, who has taken his Oath to restore a Sword to *another*, is, notwithstanding, *not* obliged to restore it to him, if grown Mad. And *he*, who has sworn to take a *certain* Woman to Wife, is yet *not* obliged to marry her, if he discovers afterwards, that she is with Child by *another* Man. Now, it is *just* and *reasonable*, that *these*, and the *like* Conditions, the *Reasons* of which are *evident* and *clear*, should

(b) In juramento semper Jus Superioris intelligitur exceptum.
2. Decret. 24. 19.

be understood to be implied in every Oath, though *they* happen not to be expressed. And certainly, *he* would be an over-rigid Interpreter of an Oath, who should go about to exclude any of them. But, should any Man admit of Exceptions that are more doubtful, and, not only foreign to the Words of the Oath, but also, contrary to all sound Reason, and not approved of by common Right and Custom, and the Consent of Nations; would not *He*, certainly, by so rash an Enterprize, remove the Boundaries of an Oath, prescribed by God, from their proper Places, and open a large Flood-gate to all Kinds of Perjury? Let this, therefore, concerning the strict Interpretation of an Oath, be our second Hypothesis.

II. I have treated the more copiously of this, as well as of the former Hypothesis, concerning the Simplicity of an Oath; because, (though many other Things crowded into my Mind, during my Meditations on this Subject not unworthy of being made known, which yet, for Brevity's Sake, I thought proper to omit), not only a clearer Explication of those Things appeared to me very necessary, especially, in these most dissolute Times, wherein Men ordinarily play with Oaths, (c) as Boys do with Dice or Cockals; but also, because, both these Hypotheses will be

(c) Lyfandri dictum apud Plut. in Apothegm: Idem tamen Lib. de fort. Alexan. id tribuit Dionysio Tyranno.

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extremely useful in what, by God's Permission, I intend to lay before you in my future Lectures. The remaining Hypotheses I shall dispatch in fewer Words. The third Hypothesis is, "That, " an Oath does not cancel, or make void a prior " Obligation. An Oath, indeed, by its own Nature, contains an obligatory Force or Virtue, but a constructive only, not a destructive One; that is, it can induce, or lay a new Obligation where there was none before, or, even confirm that which was before; but, it cannot cancel that which it finds, nor super-induce, or impose another that is repugnant to it. The Reason is, because, by every Obligation a Right accrues to, or is conferred upon, another. For, whoever is obliged, is obliged or bound to another Person: And, it appears very unjust, that, by the mere Act of one, the Right of another should be prejudiced without his Consent. Nor will it make any Difference in this Matter, whether, that prior Obligation which we suppose was Natural, or acquired. A natural and necessary Obligation is that, by which we are bound to the Performance of some Duty to another, which we owe to him in, or on Account of, our own Persons, by Virtue of the Law of Nature; and, which is called by some, (as I informed you in the former Lecture), "The Obligation of Equity;" because, it derives its Origin from the Law of Nature, which is, in itself, most just, and the very Rule of

of all Equity. Such is the *mutual Obligation* that subsists betwixt Husband and Wife; Father and Son; Master and Servant; a Prince and his Subjects. An *acquired and voluntary Obligation*, which is also called, *Civil*, (by a *Synecdoche* of the *Species*), and likewise, "The Obligation of Justice; because, 'tis just a Man should be bound by what he voluntarily does, is That, by which we are obliged to the Performance of some Duty to another, which we owe him pursuant to Agreement or Promise, by Virtue of some proper voluntary Act of our own. Such is the Obligation that arises from Promises, Vows, Covenants, and other human Contracts and Conventions. If therefore, an Oath should be tendered to any one to be taken, containing any Thing contrary to, or inconsistent with, a former Obligation, whether natural or acquired; as, if it should be contrary to the Duty due to a Parent, or to a Prince; or, if it should be repugnant to that which was before lawfully sworn or promised; such Oath cannot be taken by any one with a safe Conscience; or, if taken, ought not to be fulfilled. Whoever does, either the one or the other, is certainly guilty of Perjury.

12. The fourth Hypothesis follows, which is, in itself, so evidently a Rule of Law and Equity, that it needs no Proof, namely, (d) "That, to a Thing impossible there can be no Obligation." A

(d) L. 185. F. de divers. reg.

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Rule *this*, extended to every Kind of *Impossibility* that can, by any Means, happen in the Matter of an *Oath*. Now, a Thing may happen to be *impossible*, either by *itself* and *simply*, or by *Accident*. It may be impossible by *itself*, three Ways. First, By (e) *Impossibility of Nature*, in which Sense, it is impossible for a Man to *fly*; or, for a *Fish* to *speak*. Secondly, By *Impossibility of Fact*, in which Sense, it is impossible for *Cajus*, who sojourns to-day at *London*, to meet *Titius* To-morrow at *Venice*. Thirdly, (f) By *Impossibility of Law*, in which Sense, that is said to be *impossible* for any one, for the Performance of which he is not vested with a *lawful Power*; and, in this Sense also, that common Saying is to be understood, "*That, we can do that only which is lawful.*" Thus, it is *impossible* for the Mayor of a City to confer upon any Man the *Degree of a Doctor*. Now, should any one swear, that he would do a Thing that is *impossible* in any of these three Respects, his *Oath* would be *vain*, and *void* from the *Beginning*; and, by Consequence, would not only, not at all oblige him to the Performance of *what* he had sworn; but, even not so much as to *Attempt* or *endeavour* the Per-

(e) Si Stipulor ut id fiat, quod natura fieri non concedit, obligatio non consistit. L. 35. F. de Verb. Obligat.

(f) Ubi Conditio jure implei non potest, nullius momenti est Stipulatio. S. 137. L. 6. E. de Verb. Obligat: — Generalitèr quoties pactum a jure Communi remotum est, servari hoc non oportet. L. 7. S. 16. F. de Pactis.

formance

formance of it. But, a *Thing impossible, only by Accident*, must be considered in somewhat *different* a Light; Thus, should a Man that is sworn to pay the Sum of an hundred Pounds within the Space of a Month, which is a *Thing by itself, or simply, not impossible*; yet, should he, in the *mean Time*, be so prevented by some *sudden, unexpected Misfortune*, that he could not make up so large a Sum in the *Time limited*; though, he would *not* be obliged, in the *Court of Conscience*, to perform what he had promised, that is, to pay the *whole Debt* at the *Time appointed*, which is *now* rendered *impossible* to be done by him; yet, he is *obliged* to do *all* that lies in his Power, that is, to pay *as much, and as expeditiously*, as he *possibly* can. The Reason of both is, because, since the *Impossibility* alone impedes and obstructs the *Obligation*; the Obligation is (g) *cancelled* as to *that Part alone*, which is *impossible* to be done; but remains in *full Force* (h) as to the *rest*. And, he that cannot possibly perform *all* that he *ought*; yet, ought to perform *all* that he *possibly* can.

13. The fifth Hypothesis that I shall lay down, is, "That, to a *Thing unlawful* there can be *no Obligation*." Now, whatsoever is contrary to *any divine Precept* in the Decalogue, or to good Morals; whatsoever is repugnant to *Piety*

(g) Vid. 97. & l. 126. S. 3. F. de Verb. Obligat.

(h) Tum liber eris a Juramento. Gen. 24. 8.

towards God, or to Charity towards our Neighbour; whatsoever is contrary to the good of the Public, or inconsistent with the Peace of the Church, or State, or of private Families; in a Word, whatsoever is, in any Respect sinful, is unlawful. To this Head those common Expressions may be reduced, (i) “That, an Oath is not a Bond of Iniquity; and, that, in sinful Promises Faith is not to be kept, but revoked or broken.” Now, the Reason, why these Things do not oblige, is, because, every Thing that is unlawful is contrary to Duty: But, every Obligation supposes and refers to, a Duty. Besides, whatsoever is unlawful, is, some Way or other, prohibited by God, (either immediately, or by Consequence): But, God’s Prohibition obliges us, not to do that which is forbidden; which Obligation, no subsequent Oath, according to our third Hypothesis, can cancel or disannul. Nay, he that has sworn to do that which cannot be done without Sin, is so far from being obliged to the Performance of it, that he is rather obliged not to perform it at all. But then, you will say, that, for a Man not to fulfil what he has sworn, is Perjury. I own it; but, if the Matter, which was sworn, was unlawful; then, the Man perjured himself in the very Instant he took the Oath; but, he does not perjure himself again when he Coun-

(i) Vid. Can. 22, 9, 4.

teracts it. And, indeed, to perform an *unlawful* Thing for *this* Reason, because you have sworn it, is *no other* than, like heaping *Pelson* upon *Ossa*, or, (k) adding *Drunkennes* to *Thirst*, to add *Wickedness* to *Perjury*; it is *no other* than, instead of fulfilling one's Oath, rather to fill up the *Measure* of *Perjury*; and, *obdurately* and *impenitently* to persevere under the *Guilt* of it.

14. But, *here*, we must observe with Regard to *this Hypothesis*, that, the Question, "*Whether, this, or that Oath be lawful*," is *widely* different from the Question, "*Whether, this, or that Oath be Obligatory?*" For, though it is certain, that, *what* evidently ought *not* to be performed, ought *not*, by *any* Means, to be sworn; yet, it may, and very often does come to pass, that, *what* ought *not* to have been sworn, yet having been sworn, ought to be performed. Of *this* we have a very famous and clear *Example* in the *League*, which *Joshua* made with the *Gibeonites*. Now, the *Reason* of the Difference here, is *this*. Where an *Oath* is therefore *unlawful*, because, *that* which is sworn is a *Thing unlawful*; there, a *Sin* is *doubly* committed, namely, both by *taking* the *Oath*, and by *fulfilling* it. Thus, should a Man swear, that, he would kill an *innocent* Person, and should carry *such* *Oath* into Execution, he would be *Guilty* both of

(k) Πτόθλας ὑπάρτια ὑπάρτοις. Philo.

Perjury and of *Murther*. And, indeed, *such* an Oath is, in *no* Sort, obligatory, which is the *true* Sense and Intention of the *last Hypothesis*. But, where an Oath, concerning a Thing *not* unlawful, becomes by *some other* Means unlawful, as, through *some external* Defect, or on Account of *some undue* Circumstance; there, it may *oblige* the *Party swearing* to the *Performance* of his Promise, unless *some other* Impediment should appear, which might obstruct it. In which Case, *that* common Saying takes Place, “*It ought not to have been done, but, when done, it is valid and binding.*” We may, therefore, make *this* Distinction, that, an Oath may be said to be *unlawful* two different Ways; either, in Respect of the *Thing sworn*, or, in Respect of the *Act of swearing*. An Oath *unlawful* in Respect of the *Thing sworn*, is *not at all* obligatory; but, an Oath, *unlawful* in Respect of the *Act of swearing*, is *obligatory*, unless *impeded* by *some other* Cause. But, of *these* Things we have already sufficiently discoursed.

These are the *Presumptions* or *Hypotheses*, which I thought proper to prefix to the ensuing Tractate; and may serve as *Props*, or *Pillars*, to shore up and support *what* I shall hereafter offer, concerning the *Bond* or *Obligation* of an Oath, and the *Solution* of *that* Bond. A Subject *this*, which, though very copious; yet, from *these two* premised Parts, I am confident, the other will receive *such* Light and Strength, that I despair not of being

being able to finish, *this Term*, the *whole Dissertation* on the Subject before us. And, in order to *this*, I shall endeavour, (if God permit), to collect and range together *all that great Variety* of *Cases* in so *narrow* a Compass, as, if I possibly can, to comprehend, in *five Lectures*, the *whole* remaining Part, that is, all that relates to the *Bond or Obligation* of an *Oath* in *four Lectures*, pursuant to the *four Kinds of Causes* at first mentioned; and, *all that relates to the Solution* thereof, in the *Fifth and Last*.



THE
THIRD LECTURE.

I. **I** Now, at Length, begin to launch out into the *vast Ocean*, intending, according to Promise, to treat of the *doubtful Cases of Conscience*, so far as relates to the *Bond or Obligation of an Oath*; and that, pursuant to these four Kinds of *Causes*, namely, the *Material, Formal, Efficient, and Final*. But, before I set Sail from the Port, I must beg leave, *previously* to inform you, that, I shall *not* be over-solicitous about the *Method* of what I shall offer upon *this Subject*. Order, indeed, is *extremely useful and necessary* in every Kind of *Study*, and in the *Management* of every *Discourse*: For, without it, a Man may, perhaps, by *great and constant Reading*, be able to amass a *vast Quantity* of *various Kinds* of *Literature*; but *then*, it will be so confused and undigested, that it can be but of very *little Use or Advantage*, either to himself or others. But, on the *other Hand*, I have always been of Opinion, that, *that senseless Manner of Dividing and Subdividing* into *various Parts*, and *that too great Accuracy of Method*, (which I see some *too anxiously pursue*), ought to be *avoided*, as a troublesome Kind of *Superstition*, and no small Impediment

Impediment to Learning. It will be sufficient for me to reduce *all* that I have to say, in *such* Manner, to *certain* Classes, as that, *some* Reason, at least, of *Affinity* or *Analogy* to warrant my *so* doing, may *evidently* be assigned; being *little* solicitous, lest any one should take an *Exception* and say, that, I had not *nicely* enough reduced the *Sense* and *Interpretation* of an *Oath* to the *Formal*; or, *some* Effect, to the *final* Cause thereof. Now, since where *all* the *Causes* concur to the *Prduction* of an *Effect*, the *Matter* is, in the *first* Place, required, as the *primary* Subject of *Generation*; in the *next*, the *efficient* Cause, which may, by *Acting*, produce the *Form*; Thirdly, the *Form*, which may be *introduced* upon the *Matter* by the *Action* of the *Efficient*; and Lastly, the *End*, for the *Sake* *whereof* the *Efficient* operates; We shall therefore, pursuant, as it were, to the *Order* of *Nature*, begin with the *Matter*; and then, proceed *methodically*, and in their proper *Order*, to the *Rest*.

2. By the *Matter* of an *Oath*, I understand that Thing, about which it is employed; and, in Confirmation of which, an *Oath* is applied and used, whether, *such* Thing be considered, as to be hereafter, or, as *already*, sworn. Now, the Question, whether it may be *lawful* to swear in this, or that particular Manner, relates to the Thing to be hereafter sworn; but, the Question “Whether, and how far an *Oath*, whether law-

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ful or unlawful, supposing it to have been taken upon a true State of the Matter, is binding in Conscience, relates to the Thing already sworn; it being certain, that an Obligation may arise even from an unlawful Act: and, This is the Question, which alone is proper or peculiar to our Institution: yet, I shall sometimes, cursorily, and by the Bye, especially, where I think I can do both at one and the same Time, give you my Sentiments concerning the other Question also; and that, more especially, since I have been lately informed by some of my Friends, that it will not only be expected by some, but also be very acceptable and pleasing to the most of my Auditors. The Matter, therefore, of an Oath, (To come, at last, to the Thing itself), is, either Definite, or Indefinite. That which is definite and certain may be considered, either as to it's natural Essence or Existence, that is, whether the Thing is possible, or impossible, to be performed; or, as to it's Moral Essence or Quality, that is, whether, the Thing to be done be necessary, unlawful, or Free?

The FIRST CASE. 3. *The First Doubt, therefore, is, what Obligation there is in an Oath concerning a Thing impossible; that is, in Case a Man should swear he would do that, which he is not able to perform, "Whether, and how far, is he obliged? Now, here three Cases principally occur. The First, is, where a Thing*
to

to be sworn was, from the *Beginning*, and at the *very Time* of *swearing*, plainly and simply *impossible*; and *that*, whether, by *Impossibility of Nature*, that is, when the *Matter itself*, considered *nakedly* and in *itself* without *any* Respect to *Circumstances*, implies a *manifest* Contradiction; or, is *repugnant* to the *Nature* of *some Species* or *Kind* of *Beings*; as, if a *Man* should promise to teach an *Ass*, *Letters*. Or, by *Impossibility of Fact*, that is, when the *Matter*, in the *Language* of the *Schoolmen*, is *potentially* (1) in a *Remote* or *distant Condition* for *Performance*, that is, when there is *no* *Repugnancy* arising from the *Nature* of the *Thing itself* to the *Possibility* of it's being performed; yet, on *Account* of a *Defect* in *some* *Circumstance*, as (for *Example*), on *Account* of the *too great Distance* of *Place*, or being *streightened* in *Point* of *Time*, or for *some other* *Reason*, that *Power* is *so obstructed*, that, it *cannot* pass into *Action*; as, if *Caius*, who is to *Day* at *Oxford*, should *Promise* to *Sup* with *Titius* *To-morrow-night* at *Paris*. Or, *Lastly*, by *Impossibility of Law*, that is, when a *Man* takes upon himself to do *something* that is *forbidden* him by *some Law*, and for the *Performance* of which he is *not* vested with a *legal Power*; as, if *Caius*,

(1) To *Exist*, in *Potentiâ*, is used among the *School-writers*, to denote that *Existence* which a *Thing* has in a *Cause* capable of producing it, but which has not *actually* produced it. In which it stands opposed to *Existence in Actu*. Thus *Brandy* and *Pepper*, tho' cold to the *Touch*, are *potentially* *Hot*.

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not being the *Heir* of *Titius*, should, notwithstanding, promise upon *his* Death to give *Julius* the third Part of *Titius's* Goods and Chattels. Now, in *Answer* to the *Doubt* in this *first* Case, I affirm *briefly*, that, an *Oath*, concerning a Thing *simply Impossible*, is neither *lawful*, nor *obligatory*. It is not *lawful*; because, void both of *Judgment*, and *Truth*: For, what Man is there of *sound Judgment* that can hope, or, of *Veracity* that can intend, to do *what* he knows to be *impossible* to be performed? Nor, is it *Obligatory*; no; so far from it, that, it *neither* binds to the *Performance*, nor so much as to an *Endeavour* to perform it. For, as has been *already* said, “There can be no *Obligation* to a *Thing impossible*, as *impossible*; and, it is *absurd* and *foolish* in any Man to *Attempt* what he can never *effectually* perform.

4. The *Second Case*, is; when a
THE SECOND CASE. Thing, in *itself*, not *impossible*, but which, at the *very Time* of taking the *Oath*, appears to be *so improbable*, that, it is much *more* likely that it *cannot*, than that it *can*, be *afterwards* performed; yet, by the *Interposition* of *some Impediment*, becomes at Length *impossible*. For, where a *Concurrence* of *many* Things is *so necessarily* required for the *Performance* of any Thing intended, that, if *one*, out of *many*, should happen to be *wanting*, *all* the rest must *necessarily* be in *vain* and to no *Purpose*;

as, if a Wheel or Pin, though never *so small*, should be taken out of a *Watch*, the *rest* of the *Machine* would be *useless*; there, it can *scarcely* happen, but that *all* the Pains taken about *such* Thing must become *vain* and *ineffectual*; as, if *Caius* should take upon himself, by his *own proper Industry* or *Interest*, to make *Titius*, an *Upstart* and *obscure* Person, *Consul*, at an ensuing Election, in *Opposition* to *such* Competitors as are the *most* illustrious in the City or State with Regard to *Birth*, *Glory*, *Virtue*, and *Authority*? I answer, that, *such an Oath is not lawful*, unless some *such Clause* as this, “*If I shall be able*; or, “*So far as shall be in my Power*; or, *some other* of the like Import, be *expressly* added. If you should alledge, that, there is no Necessity for the *Addition* of a *Clause*, which ought *ordinarily* to be understood, *where* the Person swearing is presumed *not* to have been *able* to foresee *any* Thing that might *impede* the fulfilling of *his* Promise; But, *where That* cannot be *presumed*, but rather the *contrary*, namely, that *he* could *not* be ignorant, but that *many* Things might happen which might *impede* it; there, *so mild an Interpretation* ought *not ordinarily* to be admitted or allowed. Yet, *this Kind of Oath is Obligatory*, *not*, as to the *Performance* or *Effect*, which we suppose to be *impossible*; but, as to the *Endeavour*, while *any Hope* remains, though *never so small*, That the Thing may be performed. Yea, by *how*

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much the *more* and *greater* the *Difficulties* are that are laid in the Way; by *so much* the *more* strongly and resolutely *must* a Man *endeavour* and *strive* to Surmount them. But, after the *Matter* is plainly become *desperate*, and it appears evidently, that, it *cannot* be done; Then, the *Obligation* ceases, pursuant to *that fundamental Rule* already mentioned, “*That no Man is obliged to an Impossibility.*”

5. The *Third Case*, is, *when a*
The THIRD
CASE. Person that swears, does, in his *own* Opinion, suppose a *Thing* to be *probable*; and *faithfully* intending to *perform* it, makes *no Doubt*, but that, (by God’s Permission), he may be *able* to effect *what* he has *promised*; yet, upon some *emergent* and *unexpected Casualty* afterwards, which could neither be foreseen, nor guarded against by *any human Means*, at Length perceives the *Matter* to be *impossible* to be performed: As if *Callias*, who lives at *Thebes*, should have sworn to pay *Socrates* at *Athens*, *five Talents*, at, or upon a *Day appointed*; and, having *carefully* provided the *Money*, should *lose* it by *Theft*, *Rapine*, or some *other fraudulent Manner*; or, should be taken *Captive* by the Way, and *carried* to *some other Place*: So that, he could *not* pay the *Debt* in *due Time*, according to *Appointment*; *such Oath* is *lawful*, though the *Clause*, “*If I shall be able, or the like, be not added*; which yet, according to the *com-*

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mon Interpretation of Law, ought to be supposed to be implied and understood in it. Now, this seems to me to be a sufficient Cause of the Difference betwixt this and the Case preceding, namely, that since the End of an Oath is, to create (a) Belief of a Promise made to the Person to-whom the Oath is sworn, it is expedient and fit, that, every Thing should be expressly mentioned at the Time of swearing, which appears conducive to render our Credit more firm and strong with such Person; but, on the other Side, that, every Thing should be concealed or suppressed, which might tend to render our Faith or Credit the more suspected by him. For, certainly, as no Credit ought easily to be given to a Person that is ready to swear in a Matter not at all probable; but, such a Man would be considered as Forward, Rash, and Over-Confident, if he should, without any Exception, or expressing any Sign of Difficulty, engage simply to perform a Thing Big with Hazard and Uncertainty: So, on the other Hand, should an Exception be added, when no Fear of Danger appears, it would render the Swearer suspected, as if he sought for nothing else, by such Interpretation and unseasonable Diligence, but for some Pretence or Cover for the Violation of his Faith. Now, this Kind of Oath obliges the Swearer to the Performance

(a) σύμβολον πίστεως. Philo.

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of as *(b)* much as lies in his Power, in Case he cannot perform the *Whole*. And, if any grievous Damage should happen to another, on Account of the Non-performance of his Oath, he is bound, at least in some respect, to make amends for it by conferring a Benefit of some other Nature upon him, as soon as an Opportunity shall offer; especially, if such Impediment, or Non-performance happened, through some Negligence, Imprudence, or Fault of his own. And, this may suffice to be said, concerning the *first Doubt*.

6. The second Doubt follows,
THE FOURTH CASE. namely, concerning an Oath about a Thing necessary. By a Thing necessary

I understand that, which is a Duty incumbent upon us by Virtue of a divine Precept, even without an Oath; so that, should we not perform it in due Time and Place, though not sworn thereto, we would certainly commit a Sin; as, should we swear, “not to maintain our indigent Parents; or, “not to restore a Pledge; with others of the like Nature and Import. To which Head those Oaths belong, which use to be required of Subjects concerning their bearing Allegiance to their King; and, concerning their acknowledging and defending the Regal (2) Supremacy; which are
taken,

(b) Videtur Excusatus esse à faciendo quod juravit, licet teneatur facere quod in se est. Aquin. 2. 2. qu. 89. 7.

(2) Supremacy, in the English Polity, is the Superiority, or Sovereignty of the King over the Church, as well as State of England, whereof he is established “Head; whereby, pursuant to the Laws,
among

taken, in a set Form of Words by such as are admitted to any Magistracy or public Employment, in order to make them faithfully discharge their Offices. Now, concerning the Obligation of

among other Things, not only the Laity, but all Bishops and Clergymen are required to take the Oath of Allegiance and Supremacy to the King, in Opposition to the Pope, or any foreign Power.—Agreeably to which, the judicious Hooker asserts, (*Eccles. Polity*, B. 1.) “ That the public Power of all Societies is above every Soul contained in the same Societies. And, the principal Use of that Power, is, to give Laws unto all that are under it ; which Laws in such Case we must obey, unless there be Reason shewed, which may necessarily inforce, that the Law of Reason, or of God, doth enjoin the Contrary : Because, except our own private, and but probable Resolutions be, by the Law of public Determinations, over-ruled, we take away all Possibility of sociable Life in the World.” And, if this be true, as it certainly is, what then can be said of those natural-born popish Subjects of these Kingdoms, who not only think and act, as if they were under no natural Obligation to acknowledge and defend the Supremacy of their lawful King, and refuse to swear Allegiance to him, or yield Obedience to the Laws, in this Point, duly made and established for the common Security and Welfare of the whole Community ; but also, on the Contrary, most perversely acknowledge and maintain the Supremacy of a foreign popish Pretender to the Throne of these Realms ; and yet, cry out, “ That, they are persecuted merely for their Religion, when such Oath is required of them ?” Surely, such must, in the Opinion of all unprejudiced Persons, be allowed to think and act contrary to all Reason and pure Religion, as well as contrary to the well-known fundamental Laws of the Community, wherein they chuse to live ; and, consequently to be no other than bad Subjects, or rather Traytors to their King and Country,—Indeed, it must be owned, That, it is not the Spirit of the Protestant Religion, as established by Law in these Kingdoms, nor of our Constitution in civil Government, to make any Distinctions, or to lay any Restraints on natural Liberties, or natural Rights, till such time as Men, by their avowed Principles, and consequent Behaviour, or by assuming unnatural Liberty, and pretending to unnatural Rights, make it absolutely necessary for the Legislature to lay them under such temporary Restraints, as shall be deemed sufficient to keep them within due Bounds ; which Restraints are intended to continue

of *this* Kind of Oaths, there can be *no* Dispute. For, *those* Things which we are obliged to *perform*, even *without* an Oath; we are, *certainly*, under (c) *much stronger Obligations* to the *Performance* of them, when *sworn* to it; because, a *new Obligation*, derived from the Oath, is *added* to *that* which *before* subsisted by *Virtue* of the *Precept*. We shall *not*, therefore, dwell *any* longer upon *this* Doubt.

7. *The third Doubt* is, concerning an Oath about a *Thing unlawful*. I call *that Thing unlawful*, which *cannot* be done without *Sin*; that is, Inasmuch, as, (in the Language of the *Schoolmen*), it *obviates*, or, is opposite to *some divine Precept*; every *Sin* being a *Transgression* of, and *contrary* to, the *Law* of *God*. Now, this Kind

(c) Βραχὲ δὲ προσιδίῃσι ἐπιμαρτυρεῖται ψυχῇ καλῇ. Sopho. in Hippodam.

continue *no* longer than the *Pretences* that occasioned them, *subsist*, and the *Principles* are *not* disclaimed or renounced, which the *supreme Powers* judge to be *inconsistent* with, and *destructive* of, their *political Government*. It is *not*, therefore, on the *Score* of *Religion*, that the *Romanists* are by *our Laws* prohibited the *Use* of *Arms*; or, that the *Invoker* of *Saints*, as *such*, is *limited* in, or *forbidden* the *public Exercise* of, his *Religion*.—No.—It is the *Subject* of the *Pope*, or, the *Owner* of a *foreign supreme Head*, and the *Non-juror* to a *Protestant Government*, tho' enjoying the *Privileges* of it, that are *restrained* from the *public Exercise* of their *Religion* by our *Penal Laws*, which, as they seem, for the *most Part*, to be made in *terrorem*, and only designed to keep *ill-disposed*, or *rebellious* Persons in *Peace* and *Quiet*; so, they are *seldom* or *never* carried into *Execution*.—It is a *Religion only*, which enjoins the *Extirpation* of *Protestants*, whom *Papists* call "*Hereticks*"; and, which *absolves* from the *Obligations* of *Nature*, that is *forbidden*, though *connived* at in *Practice*, even by the *Legislature*.

of Oath is so very *unlawful*, that, not only the Party so *swearing* commits a Sin; but, he likewise, who, by his *Authority, Counsel, or any other Means*, compels or induces another to take such an Oath. But, of the Party *compelling*, I shall, perhaps, treat in another Place. However, He, in the *mean time*, *sins*, who takes such an Oath, whether, he *intends* to perform what he swore, or, whether he intends it *not*. If he *intends* it, he *sins* by *willing* a Thing unlawful; and so, swears *not in Justice*; if he intends it *not*, he *sins* by telling or asserting a *Falsehood*; and so, swears, *not in Truth*. But, whether he *intends* it, or *not*, it is *certain*, he is, in *no sort* obliged to the *Performance* of it. It very often, indeed, happens, (which argues great *Contempt* of the *Divine Majesty* in Men), that, great Numbers are led, either by the *Violence* of Anger, or *Fear* of Danger, or *Hope* of Advantage, or the *Instigation* of Friends, or by a certain *false Modesty* and *obsequiousness* of Temper, or, for some other Reason, (wherein they too much indulge their *affections*), to affirm boldly, after having taken God to witness, that they will do those Things, which they, at that very Time, either certainly know to be *unlawful*; or, which, at least, when they come afterwards to be more free from depraved Affections, they easily apprehend, cannot be performed by them, without Sin. And yet, so great is the *Perverseness* of Men's Judgments, that, you may see
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great Numbers so bewitched by the *Juggles* and *Delusions* of *Satan*, the most *skilful Contriver* of *Wiles*, that, though you cannot compel or drive them by any *Conscience of Duty* to the Performance of good *Actions*; yet, imagine themselves, through a most *pernicious Error*, to be so (d) *strongly bound* by the *religious Tye* of an *Oath* to the Performance of *wicked Actions*, that, they hold themselves (e) *inviolably obliged* by the *Bond* of such *Oath*, to fulfil what they have *sworn*, though never so *unlawful* or *ill-intended*. But, it has been already asserted in our *Fifth Hypothesis*, and established by many *Reasons*, that, neither, “*can there be an Obligation to a Thing unlawful, as unlawful*; nor, can an *evil Thing* receive any *Validity* or *Force* from an *Oath*.”

8. But, to the *End*, that *this Matter* may be the *better understood*, and may the *more readily* be applied to *particular Cases*, I am of *Opinion*, that, since all *unlawful Things* are not of the *same Kind*, or *Degree*, I ought to treat somewhat *more distinctly* of *this Subject*. *Whatsoever*, therefore, is *unlawful*, is *unlawful*, either

(d) Sæpe plerique constringunt se jurisjurandi Sacramento, ut cum ipsi cognoverint promittendum non fuisse, Sacramenti tamen Contemplatione faciant quod sponponderunt. Ambros. 1. de Offic. 12.

(e) ——— Et juravit illicitè et perseveravit injustè. Verum tamen non voluntate, sed verecundiâ. Nam probro ducitur apud Francigenas juramentum solvere, quamlibet malè publicè juratum sit. Bern. Ep. 219.

by itself, or by Accident. Whatsoever again, is unlawful by itself, is so in two Respects, either primarily, or secondarily. . . That is said to be unlawful by itself Primarily, and, as I may say, in the highest Degree, which, in the Nature of the Thing itself, is in such manner unlawful, that, it is forbidden by God to the whole Race of Mankind. Thus, whatsoever, is contrary to God's sacred Law, contained in the two Tables of the Decalogue, is unlawful; or, whatsoever is contrary to Piety, in the Worship of God; or, to brotherly Love, in the Works of Justice and Mercy.

9. Now, let the First Case concerning a Thing unlawful in the first respect be this. Suppose, a Man should swear, That, he would offer Sacrifice to Idols; or, would adore the (3) Image of the Blessed Virgin, which are Sins of Commission:

(3) The Worship of Images is a gross Corruption in the Church of Rome: And therefore, the Church of England hath condemned it as Idolatrous, and proved it to be so, by the Authority of God's holy Word, and by the Testimonies of the ancient Fathers, as appears from the Homily, "against the Peril of Idolatry, even to a Demonstration.

I shall not mention the many Scriptures, in which God prohibits, and expresses his Abhorrence of this Sort of Worship, and dreadfully threatens those who practise it; for, that would be to transcribe a great Part of the Bible. Whosoever can reconcile it with the second Commandment, he need not doubt, but he may make Perjury and Murder, and Theft, and False-witnessing, to become Virtues: Which is, indeed, no more than the Church of Rome does; for, to break Faith with Hereticks, to rob, and falsely accuse them; yea, and to murder them too, are, in their Divinity, great Virtues and necessary Duties.

Commission: Or suppose, he should swear, That, he would *never* be *present* at the *Celebration* of *divine* Offices; nor *hear* Sermons; nor *partake* of the Lord's Supper; nor *keep holy* the Sabbath Day;

So far were the *primitive* Christians from worshipping of *Images*, that, many of the *most learned* of them thought it was a Sin, so much as to *make* them; and others, who did *not* scruple the *making* them; yet, thought it unlawful to *have* them in *Churches*, tho' for *no* other Use than Ornament. And, when *some*, in the *Fourth* Century, thought they might be permitted in Churches; they, notwithstanding, abhorred the Thoughts of *giving any Manner of Worship* to them: *All* which are *so fully* proved by the learned Bishop Taylor, and Dr. Stillingfleet, that, I forbear to insist upon them: Though, it is a Matter that needs *not* Proof; because, it is confessed by Cassander, "That, *the ancient Christians had a great* " *Abhorrency for all Veneration of Images.* Cass. Consult. Art. 21."

It is certain, the Pope himself was an *Enemy* to *Image-Worship* for *six hundred Years* after *Christ*. For, Gregory the Great, to a certain *Recluse* who desired the *Image* of *Christ*, expressly answered; That, *Images were not to be worshipped.* And, in his Epistle to Serenus Bishop of Marseilles, though he *blames* him for *breaking the Images in pieces*; yet, he *praises* him, for that he would *not* suffer them to be *worshipped.* He thought, they might be of *Use* for the *Instruction* of the *Ignorant*, but would *not* endure that *they* should be *adored.* For, it is *one* Thing, saith he, "to *adore* a *Picture*; another " Thing, to *learn*, by the *History* of the *Picture*, *what* is to be " *adored*; if any Man will *make* *Images*, do *not* forbid him; but " by *all* Means *avoid* the *Worshipping* of them." (L. 9. Ep. 9.)

But, after they were once brought into Churches, Men came by *little and little* to *worship* them, 'till at length it was established by a Law in the *second* Council of *Nice*, above *700 Years* after *Christ*, that *they* were to be *set up* in *Churches*, to the *End* that they might be worshipped, and *that*, with *true* and *proper* *Worship*; and, *all those* were *anathematized*, who durst say the *Contrary*: which *Decree* was confirmed by the *Fourth* Council at *Constantinople*, and afterwards by the Council of *Trent*.

And, though *the* *Worship* decreed by *that* Council was of an *inferior* Nature; yet, in *Process* of Time, it was advanced by the *Church* of *Rome* to *that* *supreme* *Worship*, which is *proper* to *God* himself. For, before *Luther's* Time, the *approved* *Doctrine* of *that* *Church*, was, that, the *very* *same* *Worship* was to be *given* to the *Image*,

Day; which are *Sins of Omission*, against the *Precepts of the first Table of the Decalogue*. Or suppose, a Man should swear, that, he would kill his *Father*; expose his *new-born Child*; meet an *Adultress* at a *Time* and *Place* appointed; or enter into a *Conspiracy* with others to commit *Felony*, *Robbery*, *Fraud*, or any other *Crime*, which are *Sins of Commission*; or suppose, he should swear not to maintain his *aged* and *indigent Father*; nor, to give *Charity* to the *Poor*; nor, to restore the *Pledge*; which are *Sins of Omission*, contrary to the *Precepts of the second Table*. In these and the like Things, that are simply and universally unlawful, the before-mentioned Hypothesis, in the Opinion of all Parties, obtains and takes Place even simply and universally, namely, that, there can no *Obligation* arise from any such *Vow*, *Promise*, or *Oath* in itself, nor be otherwise induced (f) or acquired. “Those Contracts, say the Lawyers, which contain any base Cause or Thing in them, are not to be observed. Nay, though a Man should sin grievously by vow-

(f) Si unus, ff. de Pact.

Image, that was to be given to the *Person* represented by it; and therefore, to the *Images of God* and of *Christ*, the *Worship of Latria*, that is, that *Worship* which belongs to *God* over all blessed for ever. And, such as their *Doctrine* was, such was their *Practice*; insomuch, that *Cassander* complains, “That their *Worship of Images*, and their *Vanity* in making and adorning them, was nothing inferior to that of the *Heathens*. (Art. 21. de Imag. & Simul.)—We may add, if there was any *Difference* between *Heathen* and *Christian Rome*, it seems to be this; that, the latter hath out-done the former in this Piece of *Idolatry*. (Preserv. against Popery, Vol. I. fol. p. 27.

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ing, covenanting, swearing, or, by otherwise promising a Thing unlawful in general; yet, he would Sin much (g) more grievously by fulfilling his Promise: Because, whosoever does this, renders himself guilty of a double Sin: Of one, of the same Kind with the Fact considered in itself, suppose, of Murther, or Theft: And of a Second, of the Violation of his Religion, proceeding from his Irreverence and Abuse of the divine Name; inasmuch as he, as far as lies in his Power, justifies and establishes an evil Thing by his Authority.

THE SIXTH
CASE.

9. *The second Case is, concerning a Thing, in itself unlawful Secondly, that is, not unlawful for all Men in the Nature of the Thing itself; but, for some only, according to their respective personal States and Conditions, as they are Members of some Community, or are employed in some certain Kind of Life, or particular Vocation. For, That is unlawful for those, (and that, by itself, and not by Accident only), who are Members of any Community, which is repugnant to the (h) Laws of that Community; but yet, it is unlawful as prohibited by God, not primarily, immediately, and specifically; but secondarily, mediately, and in general, by Virtue of that general*

(g) *Impia est Promissio, quæ scelere adimpletur. 22. qu. 4. c. in malis.*

(h) *Jus jurandum contra vim Legum et Autoritatem Juris, nullus est momenti. L. Si quis ff. de legat. & fid. c.*

divine Command which enjoins *Obedience* to *Governors* in all *honest* and *lawful* Things. That, likewise, is *unlawful* almost in the *same* Degree, and upon the *same* Grounds for those, who are *obliged* to discharge some certain *Office*, *Function*, or *Duty*; or, who are *fixed* in some certain *Station* or *Condition* of *Life*, (which our *Countrymen*, though, perhaps, by an *improper*, yet by a *commonly-received* Appellation, call, “ a *particular Vocation*), that is *not* agreeable to the *Nature* or *Design* of *such* *Employment* or *Vocation*. For, that may be *lawful* for a *political* or *civil* *Magistrate*, which may *not* for a *Servant*; or, for a *Merchant*, which may *not* be *lawful* for a *Husbandman*; for a *Master*, which may *not* for a *Servant*; or, for a *married* *Man*, which may *not* be *lawful* for a *Batchelor*; in regard, *God* has established *this* as a *Law* for all *such* *Persons*, “ That, every one should *faithfully* discharge the *Duty* of his *own* *Vocation*, and *modestly* contain himself *within* the *Bounds* thereof. If therefore, an *English* *Merchant* should swear, that, he would send *Wool*, or any other *Wares*, that are by *Law* prohibited to be exported out of the *Kingdom* of *England*, to *Hamburgh*; or, if a *Magistrate* should swear, that he would *not* punish *Theft* or *Adultery*; or, a *Bishop* or *Presbyter*, that he would *never* preach, nor administer the *Sacraments*; or, a *Hind*, that he would *not* obey his *Master* that commands him to yoke his

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Oxen, or to reap his Corn; the *first* of which, is *contrary to the Laws of the Kingdom*; and the *rest* to the *Conditions of each Man's proper Vocation*: All *such* Oaths, being *taken* concerning *Things unlawful* in the Degree *now* mentioned, would, therefore, not only be *unlawful*, but *also* not *ordinarily* binding. I say, *ordinarily*, because, perhaps *some Cases* may be *assigned*, in which an Oath that seems repugnant to *some Law* of the *Community*, or of our *Vocation*, though it ought *not* to have been *taken*; yet, when *taken*, may become *Obligatory*. Thus, for Example; in a *Penal disjunctive Law*. Suppose, the *Law* of a *City* should run thus, “ *Let no Citizen thereto elected, decline the Office of Mayor; if he does, let him be fined an hundred Crowns*. Now, *Caius*, one of the *Citizens*, either because he thinks himself *unequal* to *such an Office*; or, that he may ward against *some Disadvantage* which he apprehends may arise from *his* undertaking it, takes his *Oath*, that, he will *never* take upon him the *Office* of Mayor. Now, in *this Case* or *Kind* of *Action*, the *Question* is, what is the *Obligation* in the *Court of Conscience*? I answer, that he ought *not* to have taken *such an Oath*; especially, since *no Necessity* compelled him to it: For, he *might* have refused the *Office* without swearing *at all*: Yet, having *taken such Oath*, he seems to be *obliged* thereby; and yet, *not* to have it in *his Power* to *comply* with the Request of the *Citizens*,

tizens, without *Perjury*: He is, therefore, bound to pay the *Fine*, and to refuse the *Mayoralty*. Here I would be understood to speak *precisely* with regard to the *Subject* we now treat of, namely, “ The *Matter of an Oath*; and likewise, *precisely* with regard only to what is therein repugnant to the *Law* of the *City*. For, in respect of the *End*, or of any other *Cause*; yea, even in respect of the *Matter itself*, inasmuch as it is *obstructive* of some greater public Good, or for some other Reason, a just Cause may possibly be assigned, why the *Obligation* should be cancelled and made void. Yet, *ordinarily*, as I before observed, an *Oath*, taken contrary to the *Laws* of the whole *Community*, or of a Man’s proper *Vocation*, is not *Obligatory*. And, this may suffice to be said concerning Things in themselves unlawful.

I. Now, follow those Things, which are not, in themselves, unlawful, but yet are so by Accident.

THE SEVENTH
CASE.

A Thing lawful may happen to become unlawful, either through the *Error* of the *Person* swearing; or, on Account of the *evil Effect* of the *Thing* sworn. The third Case, therefore, is, when a Man promises by *Oath*, that, he will do something in itself perhaps lawful, which yet he thinks to be *unlawful*; or, at least, is *afraid*, that it is not lawful. Thus, should a Man, that was, (before these Times), to be admitted to what is called, “ an *Ecclesiastical Benefice*, pro-

mise in a *solemn Manner* to observe all the *Rites and Ceremonies* enjoined by the *ecclesiastical Laws* in the *public Service* of the *Church*; such as, to wear a *Surplice*; to make use of the *Sign of the Cross* at the *sacred Font* in *Baptism*; to *kneel* at *receiving* the *Elements* of *Bread and Wine* in the *Lord's Supper*, with *others* of the *like Nature*; which yet, he imagines, through *some slight Prejudice*, to be both *Popish* and *Superstitious*: The *Question* is, What is the *Obligation* in this *Case*? In *answer* to which, I affirm these *three Things*. In the *first Place*, I affirm, that, *such an Oath* cannot, during the *Continuance* of *such an Error or Mistake*, be taken without the *Commission* of a *great and grievous Sin*; for, he sins *grievously*, who sins against his *own Conscience*, even though it be *Erroneous*: Because, since the *Judgment* of the *Intellect* is every *Man's more immediate Rule* of acting; the *Will*, if it does not follow *such Judgment*, declines and warps from its *own Rule*, and must necessarily be carried a *wrong Course*. Hence that common Saying, "*He that acts against his Conscience is on the high Road to Hell*." And indeed, he who swears to *what he only thinks unlawful*, would as readily swear to it as if it were unlawful in *Reality*: And so, the *Thing* that may be *lawful* for *another*, is yet *unlawful* for *him*; according to the *Opinion* of the *Apostle* in the *14th Ch. to the Romans* and the *14th Ver.*; where

where *He* distinguishes betwixt *what is unclean of itself*, and *what is unclean to him*, and clearly shews, that, *what is not unclean and unlawful in itself*, may yet be *unclean and unlawful to a Man that esteems it to be either unlawful, or unclean*. Secondly, I affirm, that, *such an Oath is not Obligatory*. The Reason of which is clear from the third Hypothesis; because, an Oath cannot cancel a *prior* Obligation, nor induce any other Obligation that is contrary to it. But, there was another Obligation, prior to that Oath which is taken, contrary to the Dictate or Command of Conscience, arising from that very Dictate itself. For, the Dictate of Conscience, whether Right or Erroneous, always obliges, at least, not to act in Opposition to it. But, that Obligation no subsequent Oath can cancel or disannul, but is itself rather invalid, and loses its obligatory Force and Virtue. Thirdly, I affirm, that, if the Person swearing should, upon better Information afterwards, not only acknowledge his Error, but correct it; then, the Oath which did not before, will from thence begin to oblige anew. For, there is, as it were, a natural Power of obliging in a Oath, which is inseparable from it, in the same Manner, that a Stone has a Power naturally and inseparably inherent in it of moving downwards; which Power is always ready to exert its Force and proceed into Act, unless hindered by some Impediment.—As there-

fore, a *Stone* wants no *new* external or foreign Power to put it in *Motion*, after it has continued for *some* Time at *Rest*; but, upon *removing* the Impediment, *immediately* by its own Force descends, or is carried *downwards*; so, an *Oath*, upon *removing* the *Obligation* of an *erroneous Conscience* which *impeded* its Force *before*, immediately and without *any further Delay*, or the *Need* of *any other Help*, becomes *Obligatory* by its own *proper Force* and *Virtue*.

11. There are other Cases concerning a *Thing unlawful by Accident*, in Respect of the *Evil Effect* of the *Thing itself*; that is, as it may possibly be *obstructive* of *Good*; or *causative*, or at least, (if I may be allowed the Expression,) *occasional* of *Evil*. For, a *good Thing* *impeded*, may be supposed to be “*Antecedent*, or *Future*. The *fourth Case*, therefore, is, *where* a *Thing* sworn seems to be *unlawful*; because, it *impedes* or *obstructs* the *Effect* or *Performance* of some *Antecedent* *Good*; suppose, of a *Vow* or *Promise* made *before*; as, if a *Man*, who had *first* bound himself by a *Vow* to the *Performance* of *some* *Work* of *Piety* or *Charity*, should *afterwards* take an *Oath* which might hinder the fulfilling of his *former Vow*: An Instance of *which* we have in *One* who is obliged, by *Vow*, to give *one Half* of his *Gain* weekly to the *Poor*, but who *afterwards* swears, that, he will apply his *whole* Gain

Gain to the Uses of War; or, as if *Caius*, having promised *Titius* to sell him a *Farm* at a certain Price, should yet, afterwards swear, that he would sell it to *Julius* at a greater Price. Now, this Case admits of no Difficulty. For, the Answer is evident and clear, and grounded on the third Hypothesis, "That, such an Oath is neither *Lawful*, nor *Obligatory*: Because, that prior Obligation, howsoever contracted, whether by *Agreement*, or *Vow*, or *bare Promise*, or merely on the Score of *Duty*, remains valid and in Force, and effectually puts a Bar to every subsequent Act to the contrary.

12. The Fifth Case, is, when that which is sworn seems to be obstructive of some future Good: As, if a Man should swear, that, he would never become a *Surety* for another Man's Debt; nor, be a *Minister* of *God's Word*, though very well qualified for such a Profession; or, that, he would not communicate to any One some very beneficial Art, of which he had the sole Knowledge; with other Cases of the like Nature. The Reason of doubting here, is, because a less Good, in Respect of a greater, is, in some Sort, to be considered as "an Evil: Therefore, an Oath though otherwise honest, yet should it impede, or, be preventive of a greater Good, seems to be "Evil. Now, no such general and certain Solution of the Doubt in this Case can be given, as may suit or comprehend every particular Fact; because, it is

THE NINTH CASE.

employed in the comparing a *greater* with a *less* Good, which very much depends on a Comparison of *Circumstances*; and *that* more especially, since *these Circumstances* are so *infinitely various*, that *they* cannot be in *such* Manner comprehended within *fixed* and *certain* Rules, but that the Matter must, in a *great* Measure, be left to the Judgment and Discretion of a *prudent* Man, to the *End*, that he may determine and at *Length* do *that*, which, upon *due* Consideration and *weighing* the Arguments as *faithfully* and *diligently* as he can on *both* Sides, shall appear to him *most expedient*, according to the *Circumstances* of *Time* and *Place*. Yet, since it is, *not*, in the *mean* Time, *simply* true, (unless it be *cautiously* understood,) that, *every* Man is *always* obliged to do *that* which is *best*: In order to *solve* the *Doubt* in *this* Case, it may be affirmed; that, an *Oath* is not *unlawful*, nor does it *lose* its *obligatory* Force and *Virtue* *precisely* for *this* Reason, “ that it seems to be *obstructive* of some *greater* Good, unless *other* Circumstances should likewise *concur*, (and *that*, indeed, is *generally* the *Case*), which may *Evince* it to be either *not* lawful, or *not* Obligatory. The Matter will be illustrated by *this* Example. Suppose, *Caius* should be instructed in the Use of some *excellent medicinal Composition*, or of some *other famous Art* by *Titius*, who was the Inventor of them; but, upon *Condition*, that he should swear *not* to communicate them to *any other* Person what-
soever,

soever, during the *Life*, and without the *Leave* and *Consent* of *Titius*. Now, the *not* communicating *so great a Secret* seems to be *contrary* to the *publick Good*; and yet, *Reason* dictates, that *Caius* is *obliged* and *bound really and truly* to the *Observation* of what he promised: Otherwise, an *Injury* would be *done* to *Titius*, whose *Interest* is *greatly* concerned, that the *Secret* should *not* be communicated or divulged; since without the *Interposition* of *such Oath*, it would *not* have been at *first* communicated, even to *Caius* himself.

13. It remains, in the *next Place*, that, we treat of a *Matter unlawful* The TENTH CASE. by *Accident*; that is, Inasmuch as it may seem to be *causative*, or, at least, *occasionative* of *some Evil*; and *that*, either to the *Person himself* that swears, or to *some other*. The *Sixth Case*, therefore, is, where *that* which is *sworn*, is *disadvantageous* or *hurtful* to the *Swearer himself*, either by bringing upon him *some certain temporal Loss*, or by exposing him to the *Danger* of *Temptation*; as, if *Caius* should *swear* to *Titius* a *Spend-thrift*, that, he would lend him the *Sum* of an hundred *Crowns*, without any *Prospect* perhaps, of being ever repaid it again, which would prove a *great Detriment* or *Loss* to him. Or, as if *Fabius* at the *Request* of his *Wife* just upon the *Point of Death*, in order to prevent a *Step-mother's* being brought over several *Children* whom she had borne him, should bind himself

self by *Oath*, that he would *not* marry a *second* Wife; whereby, he might, perhaps, *expose* himself to the *Danger of Burning*. In Answer to which, I affirm, *First*, that, *such a Promise* ought not to be made *rashly*, without *mature Deliberation*, and a *very important Reason* for it; yet, it is not *simply* unlawful. For, though *all Occasion of Evil* ought, with *all Diligence*, to be *avoided*; yet, since nothing that is not in *itself*, or, for some *other Reason*, unlawful, can *necessarily* and *universally* be the *Occasion of Evil*: And, since there is not any Thing *simply* and in *itself* unlawful for *this Reason alone*, “That it may be ‘the *Occasion of Evil*; it does not appear, that *all Promises of that Nature* ought to be *simply* condemned; especially, If *no probable Danger* of any *great Inconvenience*, upon *due Consideration*, appeared to the Party swearing at the *Time* of his taking *such Oath*. *Secondly*, I affirm, That if the *Oath* should turn to the *temporal Loss* of the Swearer *only*, without doing *any Injury* to a *third Person*, the Person that swears *such Oath* is bound to *perform* it, even though it should turn to his *own great Disadvantage*, unless the *Person* to whom he has *sworn* it, should be *willing* to *release* him from it. The Words of the *Psalmist*, in the 15th *Psalm*, are *very express*, “*He swore to his Hurt, and he will not change;*” where, in the *Hebrew*, the *first Verb* is put in the *Preterperfect Tense*; (*He swore to his Hurt*); and the

the *latter* in the *Future Tense*, (*“ He WILL not change ”*) As if he had said, it is the *Duty* of a *“ pious Man*, after he has sworn to his Neighbour to do something which he cannot perform without doing some *great Damage* to *himself*; yet, to continue constant, and to ratify *that* which he has *promised*; and, (as it is in the Words of our Text), *“ To do according to all that proceeded out of his Mouth. ”* Thirdly, I affirm, that, *such Oath* is *Obligatory*, even though it should seem to *expose* a Man to the *Danger of Temptation*, unless it should be in *some other Respect* faulty. Because, if *that* should be *sufficient* to *cancel* an *Obligation*, there would, *then*, scarcely be *any* thing found that might be *Obligatory*; in regard, there can be *nothing*, either through the *Craft* of the *Devil*, or the *Corruption* of the *human Heart*, so free from the *Danger of Evil*, but that it may be made a *Snare of Temptation*, which (unless the *Grace of God* should protect us) may become *our Destruction*. Whereas, *such Obligation* should rather, by the *Assistance of Divine Grace*, be, on the *other Side*, opposed, as an *useful Shield*, to *repel* the *Darts of the Tempter*: Forasmuch as you are, by *no Means*, to *yield* to *Temptation*, but to *strive* against it with the *strongest Resolution*; because, you are *engaged* by the *religious Tye* of an *Oath*, not to *do that*, to *which* you are *tempted*.

The ELEVENTH CASE. *The seventh Case is, when the Thing sworn seems, therefore, to be unlawful, because, "Danger of giving (4) Scandal to others, may from thence arise; that is, an occasion of Ruin may be afforded*

(4) As the learned Author does but lightly touch the Case of Scandal in this Passage, I shall, therefore, subjoin what I find upon this important Point in a posthumous Work of his, intitled, "*Nine Cases of Conscience occasionally determined.*"

In judging of Cases of Scandal, we are not so much to look at the Event, what *that* is, or may be; as at the Cause whence it cometh. For, sometimes there is given *just Cause of Scandal*, and yet no Scandal followeth, because it is not taken. Sometimes Scandal is taken, and yet no *just Cause given*. And sometimes, there is, both Cause of Scandal given, and Scandal thereat taken. But, no Man is concerned in any Scandal that happeneth to another by occasion of any Thing done by him; neither is he chargeable with it farther than he is guilty of having given it. If then, we give Scandal to others, and they take it not, we are to bear a Share in the Blame as well as they, and that a deeper Share too, ("*Wo to the Man by whom the Offence cometh.*" Matt. viii. 7.) But, if they take Offence when we give none, it is a Thing we cannot help; therefore, the whole Blame must lie upon them. Wherefore, if at any Time any Doubt shall arise in the Case of Scandal, how far forth the Danger thereof may, or may not oblige us to the doing, or not doing any Thing proposed, the Resolution will come on much the easier, if we shall but rightly understand, what it is to give Scandal, or how many Ways a Man may become guilty of scandalizing another by his Example. The Ways, (as I conceive), are but these Four.

The First is, when a Man doth something before another Man, which is in itself Evil, unlawful, and sinful; in which Case, neither the Intention of him that doth it; nor the Event, as to him that seeth it done, is of any Consideration; for, it mattereth not, whether the Doer had an Intention to draw the other into Sin thereby, or not: Neither doth it Matter, whether the other were thereby induced to commit Sin, or not. The Matter or Substance of the Action being Evil, and done before others, is sufficient to render the Doer guilty of having given Scandal though he had neither any Intention him-
self

forded them by *our* Actions. We have *many* and very *weighty* Admonitions extant in St. Paul's Epistles concerning the avoiding of *Scandal*, especially in the 14th Chap. to the *Romans*; and in

self so to do, nor were any Person actually scandalized thereby; because, whatsoever is, in itself, and in it's own Nature *Evil*, is also of itself, and in it's own Nature scandalous, and of evil Example. Thus did *Hophni* and *Phineas*, the Sons of *Eli*, give *Scandal* by their wretched *Prophaness*, and *Greediness* about the Sacrifices of the Lord, and the vile and shameless abusing their Women. (1 Sam. i. 17, 22.) And so did *David* also give great *Scandal* in the Matter of *Uriah*. (2 Sam. xii. 14.)—Here the Rule is, “Do nothing that is *Evil*, for fear of giving *Scandal*.”

The second Way, is, when a Man doth something before another, with a direct Intention and formal Purpose of drawing him thereby to commit Sin. In which Case, neither the Matter of the Action, nor the Event, is of any Consideration. For, it maketh no Difference, (as to the Sin of giving *Scandal*), whether any Man be effectually enticed thereby to commit Sin, or not, so as it had but an Appearance of *Evil*; and from thence an Aptitude to draw another to do that, (by Imitation), which should be really and intrinsically *Evil*. The wicked Intention alone, (whatsoever the Effect should be, or what Means soever should be used to promote it), sufficeth to induce the Guilt of giving *Scandal* upon the Doer. This was *Jeroboam's* Sin, in setting up the *Calves*, with a formal Purpose and Intention thereby, (for his own secular and ambitious Ends), to corrupt the Purity of Religion, and to draw the People to an idolatrous Worship; for which Cause he is so often stigmatized with it, as with a Note of Infamy, to stick by him while the World standeth, being scarce ever mentioned but with this Addition, “*Jeroboam, the Son of Nebat, that made Israel to Sin*.” Here the Rule is, “Do nothing (*Good or Evil*), with an Intention to give *Scandal*.”

The third Way is, when a Man doth something before another, which in itself is not *Evil*, but Indifferent; and so, according to the Rule of Christian Liberty, lawful for him to do, or not to do, as he shall see Cause, (yea, and perhaps otherwise commodious and convenient for him to do), yet whereat he probably foreseeth the other will take *Scandal*, and be occasioned thereby to do *Evil*. In such Case, if the Thing to be done be not in some Degree, (at least prudentially), necessary for him to do; but that he might, without

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110 The NATURE and OBLIGATION

in the 8th Chap. and 10th Verse of his *First Epistle* to the *Corinthians*. And, indeed, a true Christian ought to take very great Care, not only to consult the *Safety* of his own *Conscience* throughout

great Inconvenience and Prejudice to himself and any third Person, leave it undone, he is bound in *Charity* and *Compassion* to his Brother's Soul, (for whom Christ died), and, for the avoiding of *Scandal*, to abridge himself in the Exercise of his *Christian Liberty* for that Time, so far, as rather to suffer some Inconvenience himself by the not doing of it, than by doing of it, to cause his Brother to offend. The very Case which is so often, so largely, and so earnestly insisted upon by St. Paul, Rom. xiv. 13. 21. and xv. 1. 3.—1 Cor. viii. 7. 13. and ix. 12. 22. and x. 23. 33.—Here the Rule is, “Do nothing that may be reasonably forborn, whereat, it is like, Scandal will be taken.”

The last Way is, when a Man doth something before another, which is not only lawful, but, (according to the Exigencies of present Circumstances *pro hic & nunc*) very *behoeful*; and, in some sort, (*prudentially*), necessary for him to do; but foreseeth in the Beholder a Propension to make an ill Use of it, and to take Encouragement thereby to commit Sin, if there be not withal a great Care had to prevent, as much as is possible, the Scandal that might be taken thereat; for, *Qui non prohibet peccare, cum potest, jubet*. In such Case, the bare Neglect of his Brother, and not using his utmost endeavour to prevent the Evil that might ensue, maketh him Guilty; upon which Consideration standeth the Equity of the judicial Law given to the Jews, Exod. xxi. 33. 34, which ordereth, that, in case a Man dig a Pit or Well for the Use of his Family, and, (looking no farther than his own Convenience), put no Cover on it, but leave it open; whereby it happeneth, his Neighbour's Beast do fall therein and perish; the Owner of the Pit is to make it good, inasmuch as he was the Occasioner of that Loss unto his Neighbour, which he might, and ought to have prevented. In this last Case, the Thing is not, (for the Danger of the Scandal), to be left undone, supposing it, (as we now do), otherwise *behoeful* to be done; but, the Action is to be ordered, and carried on by us, for the Manner of doing, and, in all Respects and Circumstances thereunto belonging, with so much Clearness, Tenderness, Moderation, and Wisdom, that, so many as are willing to take Notice of it, may be satisfied, that, there was, on our Part, a Reason of just Necessity that the Thing should be done; and that, such Persons as would be willing

throughout his *whole* Conversation; but also, the *Edification of others*. He should not so much seek his *own*, as the Advantage of *many*; and consider, as well *what* may be *expedient* for *them*, as *lawful* for *himself*, lest he should abuse his *Liberty* to the *Destruction* of his *Brethren*. But, *how far* we *must* abstain from *Things lawful*, in order to avoid *Scandal*, cannot be shewn in few Words; nor, is it the *Business* of the present *Institute* to consider it. *All* that seems *necessary* to be said with regard to the *Business* in hand, is, that, “the *Danger alone* of giving *Scandal*, if no *other Reason* can be assigned why a *Thing* should be deemed *unlawful*, is not sufficient to *impede* or *obstruct* the *Obligation* of an *Oath* already taken; as we have *lately* affirmed in the *foregoing Case*, concerning the *Danger of Temptation*; for, the *Reason* and *Nature* of the *Danger* in *both Cases* seem to be *one* and the *same*, in *all Respects*.

willing to make use of our *Example*, without the *like Necessity*, may do it upon their *own Score*, and not be able to *vouch* our *Practice* for their *Excuse*; even as the *Jew*, that stood in need to sink a *Pit* for the *Service* of his *House* and *Grounds*, was not, (for *Fear* his *Neighbour's Beasts* should fall into it, and be drowned) bound by the *Law* to forbear the *making* of it, but only to *provide* a *sufficient Cover* for it, when he had made it. Here the *Rule* is, “*Order the doing of that, which may not well be left undone, in such sort, that no Scandal may, through your Default, be taken thereat.*”

I do not readily remember any *Doubt* that can occur about the *Reason* of *Scandal*, which may not be brought within the *Compass* of these *four Rules*; and then, the *right* applying *some* or *other* of those *Rules*, will give *some Furtherance* towards the *Resolution* of these *Doubts*.

THE TWELFTH
CASE.

15. Having *thus*, at length, gone through, and *finished* the *principal* Cases with regard to a *Matter impossible, necessary, and unlawful*; I proceed now to treat of the *remaining Doubts*. The *fourth Doubt*, is, concerning an *Oath* about a *Thing free*; that is, concerning a *Thing* that is neither *necessary* nor *unlawful*, but of a *middle and indifferent Nature*. Now, since *this Indifference* may arise from *two Causes*; namely, from *the Will of the Legislator* neither commanding nor prohibiting; and, from *the Levity of the Thing itself*: *Two Cases*, therefore, occur upon *this Subject*. The *first Case* is, when a *Thing* is not so determined, either by *any just Precept*, or *Prohibition*, whether *divine* or *human*, but that a *Man* may do, or forbear it, at *his own Discretion*, and as shall seem *expedient* to him, according as the *Circumstances of Time and Place* shall require: “*Let him do what he will, he sinneth not*,” says *St. Paul*, in the *7th Chap. and 36th Verse* of his *First Epistle to the Corinthians*. As, if *Caius* should *swear*, that, he would sell *Titius* a *Farm*, or lend him the *Sum* of an hundred *Pounds*. To which *this short Answer* must be *given*; that, in *this Case*, an *Oath* is both *lawful* and *Obligatory*. The *second Case* is, when a *Thing* is, either on Account of the *Levity* thereof, *unworthy* the *Deliberation* of a *wise Man*, and signifies *little* or *nothing*, whether it

it be *done*, or *not*; as, "To lift a Straw from the Ground;" or, to rub one's Beard; or, on Account of the *Smallness* of the *Matter*, not *very* valuable, nor *much* to be esteemed; such as, "To give an Apple to a Child; or, "To lend a Pin. Now, an *Oath*, concerning a *Thing* in *this* Manner *indifferent*, is *wholly unlawful*. For, it argues either very *great Irreverence* of the *sacred Name* of *God*, if, (as is *too common*), it should happen to be taken by a Man *imprudently* or *unawares*, from a *certain Habit* of *Swearing*, contracted by *long Use* and *Custom*; or else, it argues an *open Contempt* thereof, if it should be taken by *any one*, *knowingly* and *wittingly*; for, *God* is *not* to be called upon as a *Witness*, unless, *where* a *Difficulty* worthy of him shall occur; or, *where* not only a *just*, but a *great* and *important Cause* shall require it. And, in *this* all Parties *unanimously* agree. But then, what must we determine concerning the *Obligation*? I am sensible, indeed, that *most* of the *Po-pish Casuists* are of *Opinion*, that, an *Oath* concerning a *small Matter* and of *little Moment*, is, in its *own Nature*, *null* and *void*, and *no way* *Obligatory*; because, truly, a *small Thing* is *not* a proper *Matter* of an *Oath*, and a *Law* regards not *trifling Things*. But, I wonder, how *those* Men, who would *willingly* appear *so sharp-sighted* in *other Affairs*, should yet be *so very blind* in a *Matter* so clear and evident as *this*, unless

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they

they have *still* a Mind to reserve a Place for *that rotten and odious Distinction of Sins, into (5) Mortal and Venial*; with which, as with *Leaven*, they have *foully and shamefully* corrupted the

(5) Though every Sin be, in its own Nature, *deadly*, yet the *Distinction of Sins into mortal and venial*, is, in *some* Sense, admitted by *Protestants*, viz. If, by *Mortal*, be meant, *such a grievous Sin as actually* excludes a Man from the *Favour of God*, and puts him into a *State of Damnation*, as all those do, mentioned 1 Cor. vi. 9, 10. And, every other *wilful Sin*. By *Venial*, such a *lighter Sin*, for which, God, in the *Gospel-Covenant*, makes *Allowances*, and which he will not impute to *Condemnation*, to those, who *sincerely* endeavour to do whatsoever he commands; as, *Sins of Ignorance, and meer Infirmity*.

But, *this Distinction*, as it is commonly explained, and applied by the *Romish Doctors*, is plainly *destructive of a holy Life*, and one of the *greatest Encouragements to Vice*. For, a *venial Sin*, in *their Divinity*, is a *Sin*, that, in its own Nature, is *so light and small*, that, it cannot deprive a Man of the *Favour of God*, or render him *obnoxious to eternal Death* (a). And, if you ask them, what *Sins in particular* these *venial Sins* are, scarce any Sin can be named, but some or other of their *most approved Casuists* will tell you, it is no more than *Venial*; even *Lying and Slandering, false Witness and Perjury, Theft and Covetousness, Gluttony and Drunkenness*, are placed in the *Catalogue of these little, harmless Sins*. Now, let these *venial Sins* be never so numerous, the *greatest Evils*, which (according to *their Doctrine*) they can expose a Man to, are no more than the *temporary Pains of Purgatory*; and *these*, (they tell us), may be *bought off at so cheap a Rate*, that there is no Man in *such unhappy Circumstances*, but he may *purchase his Release* from them. And, what, then, remains, to give *check to a Man's sinful Appetites*?

But, for their *Looseness in Venials*, some may think they have made amends by the *Severity of their Doctrine concerning mortal Sins*. For, no Man, (as their Church teaches), can obtain the *Pardon of these*, without *Confession to a Priest*, and performing the *Penances* he imposes for them. And, *this Confession* must be compleat, not only of the *Kinds*, but of the *particular Sins*, together with the *Circumstances which change the Kind*; that, a *Pen-*
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(a) Alphon. de Castro adv. Hæref. L. 12. fol. 210.

the whole Mass of Moral Theology. But, it appears evidently, that, an Oath is Oligatory in a Matter, even of the smallest Importance: First, because, the Nature of Truth and Falsehood is the very same in a Trifling, that it is in an important Affair. Secondly, because, in an assertory Oath, whoever affirms a Thing to be otherwise than it really is, though in never so trifling an Affair, certainly forswears himself; and, therefore, by Parity of Reason, whoever, in a Promissory Oath also acts otherwise than as he has

ance may be enjoined proportionable to them (b). But, besides that, we find no such sort of Confession required by Christ, or his Apostles; no; nor used in the Church for more than four hundred Years: But, on the contrary, that our blessed Saviour proposes Pardon of Sin, how mortal soever, upon Condition of sincere Repentance and new Obedience; besides that, the Thing itself is impracticable. For, how shall an ignorant Mechanic know, what those Circumstances are that change the Kind, when, perhaps, his Confessor is not able to tell him? How shall he know, which Sins are mortal, and which are venial, when their most learned Casuists are at no Agreement among themselves about them; but, that, which one says, is Mortal, another says, is no more than venial: And, their seraphic Doctor affirms, "That, many Sins are believed to be venial, that are mortal; and, it is a most difficult Thing to discern the one from the other (c). Besides, I say, these and many other insuperable Prejudices that lie against it, as the Matter is managed in the Church of Rome, it wholly defeats its own Design. For, what Man will be ashamed to do that, which is done of Course, by the best Men in their Church; the Priest, the Bishop; Yea, the Pope himself not excepted? And, who will be afraid of the most formidable Sin, when the Penance imposed for it is usually trifling, and next to nothing; so far from giving Check, that, it is one of the strongest Provocations to Sin? For, what greater Encouragement can a Man desire, than to purchase a Pardon upon such easy Terms? (Preservat. against Popery V. I. p. 21. fol.)

(b) Concil. Trid. Sess. 14. C. 5. de Pœnit. Can. 4. & 7.

(c) Bonavent. L. 2. dist. 24. Part 2.

sworn, is guilty of Perjury. Thirdly, because, otherwise, such a Man would, so far as lay in his Power, make God a Witness to a Falsehood. Fourthly, because, every Man that swears, is obliged to perform all that he has promised, so far as he is able, and so far as 'tis lawful for him, to do it: But, to give a Child an Apple, is both possible and lawful; and therefore, he is obliged to perform it. It is true, indeed, that such an Oath ought not to have been sworn; but, when sworn, it ought certainly to be performed.

16. *The fifth Doubt remains,*
THE FOURTEENTH CASE. *namely, where an Oath is taken to perform a Matter indefinite*

and uncertain; and contains principally these three Cases. The first Case is, when a Man, in some sort, gives himself up to the Power of another Person, by promising to perform whatsoever such other shall please to impose upon him; as, if a Prince should swear, that, he would grant to one of his favourite-Courtiers whatsoever he should ask, as a Reward for the faithful Discharge of his Duty to him: Or, as if a Man's Servant or Friend should swear, that he would perform all the Commands of his Master, or all the Desires of his Friend. In this Case I affirm First, That, such an Oath, if simply understood according to the Sound or Tenor of the Words, is unlawful. For, whosoever makes himself the

(i) Ser-

(i) *Servant of Man*, or a *Slave* to the *rash Humour* of another, injures or offends *God*, whose *Servant* every *Man* is. Secondly, I affirm, that, in order to render *such* an *Oath* lawful, some other Thing must necessarily be implied and understood; namely, “*Provided, you shall will a Thing honest, possible, and just.* And, so far, and, in that Sense only, it is *Obligatory*. The *Kings* of the *Persians* and *Jews* seem, in *antient* Times, to have made use of *this*, as of a *solemn Form* of *Swearing*; and that, indefinitely, for the greater *Ostentation* of their *Magnificence* and *Grace*; namely, “*Ask what you will, and it shall be given to you, even to the half of the Kingdom.*” In this *Form*, (k) *Ahasuerus*, *King* of the *Persians*, swore to the *Queen* his *Consort*. And, when she asked a *Thing just* and *necessary*, he ordered what he had granted her to be *performed*, pursuant to his *Promise*. And, almost in the *same Form* it was, that (l) *Solomon* promised the *Queen* his *Mother*, to grant her *whatsoever she should ask*; but, when she asked a *Thing* in *Favour* of *Adonijah* which *Solomon*, who had, for a *long time*, been well acquainted with the *Ambition* of the *Man*, thought too *unjust*, he, notwithstanding his *Oath*, did not perform the *Request* of his *Mother*. By which *Action* he *sufficiently shewed*, that, he had made her

(i) 1 Cor. vii. 13.

(k) Esther v. 3.

(l) 1 Kings ii. 20, &c.

the *Promise* with *no other* Intention, than in Case the *Thing asked for* should appear to be *just*; and instructs us, by his *Example*, that, *where* an *Oath* is taken *indefinitely* to perform *another* Man's Will and Pleasure; there, *this* Condition ought *always* to be understood, namely, "Provided, *He shall will* what may, by the Law or Rule of Equity and Justice, be *modestly* expected from *him*, and may be *honestly* granted by *us*. We have, likewise, a *third Instance* of this Form of an *Oath* mentioned in the 14th Chap. of *St. Matthew*; namely, in (m) *Herod the Tetrarch*, who, in order to gratify his Brother's Daughter that danced before him, *promised*, with an *Oath*, to give her *whatsoever she should ask*. She asked a *most iniquitous Thing*, "That the *Head* of "an *innocent* and *uncondemned* Man should be "cut off, and brought to her in a *Charger*." The *King* commanded it to be *done*, "for his "Oath-sake; and for the Sake of them who sat "at Meat with him." A Man *this*, so religious, truly, and bashful, that, he was ashamed *not* to perform what he had bound himself to by the sacred Tye of an *Oath* in the Presence of so many Guests, notwithstanding the *nefarious Wick- edness* of the Deed! Let *this Example*, there- fore, be a *Warning* to us; but, let us propose that of *Solomon* for our *Imitation*. And, let us

(m) Ἀνδραὶς ὁρῶν ἐν ἀδελφῷ ὄρνει προβαίνει. Chrysost. in Math. Hom. 48.

always remember, that, an Oath, thus indefinitely expressed, must never be otherwise understood than with its (n) proper and just Exception; and, must be extended to those Things only, which were, in all Probability, thought of when the Oath was sworn; but, not to those, which had they been thought of, the Oath would never have been taken at all.

17. The second Case is, when an Oath is required of a Subject to preserve the Rights, Privileges, Prerogatives, and Pre-eminences of some superior Power, as of a King, City, or Lord of some Fee; such as, among us, are the Oaths of Fealty and Homage; the Oath of the King's Supremacy; with others of the like Nature. Now, no Body denies, but that Oaths of this Nature are lawful, and Obligatory: But, it may, on Account of the general Uncertainty of such Rights, be justly doubted, "How far they are Obligatory?" To which we must answer, that, a Subject is undoubtedly obliged to preserve, as much as in him lies, all those Rights which are evidently authorized by Law or Custom, that is, which are defined either by a written Law, or grown into Use or Force by Length of Time, or, as 'tis commonly called, by a long Prescription; that is, so far as they are already known to him, or may even hereafter, morally speaking, be made known

The FIFTEENTH
CASE.

(n) Conditio intelligitur, si Æquum sit. jus Publicum ff. de Pact.

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to him. But, he is not *equally* obliged to maintain *all doubtful or controverted Rights*; especially, since *Those*, who are *invested with Power*, are wont to *extend the Limits* of their own Lands; to *leap over the Boundaries* of their Vassals; and *not remain content* with the *just Extent* of their own Rights. However, a *Subject* ought *always* to be *prepared in Mind* to *acknowledge* and *defend* even *those Rights* that are *doubtful*, whensoever it shall be made appear to him, that *they are equitable and just*.

The SIXTEENTH
CASE.

18. *The last Case* is, *where* an *Oath* is required of a *Member* of some *Community*, suppose, of a *City*, an *University*, *College*, or *Corporation* of *Merchants*, or *Artificers*, to *observe the Statutes, Privileges, Customs, and Liberties* of such *Community*. The *Question* is, *What is the Nature of the Obligation?* I answer, *first*, That, the *Person* who has taken *such an Oath* is *obliged*, as far as lies in *his Power*, *simply* to *observe* (6) *all the fundamental*

(6) In relation to the *Breach of Oaths*, this *Question* still remains to be resolved, since it is usual in *civil Governments* to bind Men by *Oaths* to the *faithful Discharge* of their *respective Trusts and Employments*, whether, *He* is *always* to be deemed guilty of *Perjury*, who hath neglected *any one Part* of his *Duty*? Where, the *Controversy* is *not* about those *Oaths* which regard *some peculiar Act*; as, when a *Man* gives his *Evidence*; *denies a Trust*; *forfeits a particular Promise*, and the like; (for, he who violates *these*, ought, no doubt, to be branded as *forsworn*): But, about *such*, in which the *Party* binds himself to *many Things together*: As, when *Persons* are admitted to *any Office*, to be discharged by *different Performances*. And *here*, there seems to be *no Reason*, why we should scruple to take the *affirmative*

fundamental Statutes of the Community to which he belongs. I call those, *Fundamental*, which necessarily and more immediately tend to preserve the *Public Constitution, Order, and Honour* of the whole Body, or Community. But, in the second Place, That, he is not obliged to observe them always and necessarily, according to the *Rigour of the Letter*; but, according to the *Manner and commonly-received Usage*; or, according as they are, by approved Custom, observed by others. Thirdly, as to what relates to *Statutes of a lower Rank*, which relate only to *external Form and Decency*; or, which a prudent Man would judge, from the *State or Condition* of the Matter, or from the *Form of their Sanction*, or from some other probable Sign, not to have been made with an Intention to be rigidly Obligatory, every Member of such Society is obliged ordinarily to

firmative Side, in Case the Breach was made against Knowledge, and with deliberate Wickedness: Only, that there are different Degrees of Perjury, as well as of other Crimes. For, as he is reckoned less Guilty, who hath transgressed a Law or Two, than he who hath at once renounced all civil Government, or hath committed Treason against his Prince; So, he, who hath violated the whole Sum of his Duty, contracts a more heinous and aggravating Perjury, than he who hath broken only a Part—(but says Barbeyrac, “ here add Sanderfon de obl. jur. prælect. 3. S. 18.)—Nor, ought we to give any Heed to those Authors, who are of Opinion, that Persons in these Circumstances, may be absolved from the Sin of Perjury, by submitting to the Penalty of the Law. For, unless, when the Obligation was first entered upon, it was expressly left to the Choice of the Person, either to perform what he promised, or at a certain Price to purchase the Liberty of doing the contrary; the Punishment shall by no Means render him clear from the Crime.—Thus, he who hath suffer’d a Whipping for Thievery, is no less a Rogue, than if he had never felt the Lath. Puffend. Law of Nat. and Nat. B. 1. C. 2.

observe

observe them: Yet, in *such* Manner, as that, *He* may sometimes, for a *just Reason*, without any *Scruple of Conscience*, pass *that* by, which is *prescribed* to be done by some *Statute*, provided, it may be done *without Scandal*, or *Contempt*. *Fourthly*, The *Obligation*, likewise, extends, even to *such Statutes* as are to be *made or established in Time to come*; provided, they be *possible, just, and honest*. *Fifthly*, Should any *Statute*, after the taking of *such Oath*, be abrogated, or come to be *disused*, the *Obligation* of the *Oath ceases*, as to *that Statute*; inasmuch, that, *no Man* is obliged to observe it *further*, unless he swore in *special Words* to perform the *very Thing* ordained by *such a Statute*; for, in *that Case*, though the *Statute* be *abrogated*; yet, the *Obligation* still remains. *Sixthly*, since the *Statutes of Communities* are generally very numerous, and many of them not known even to many of the *Members themselves*; and, since it is very difficult, nay, scarcely possible, exactly and nicely to observe all and every one of them; whoever really and honestly lays himself out, not, *wittingly or willingly*, to omit any Part of his Duty, but applies himself, with all due moral Diligence, to discover and know every Thing that relates to his Office; and determines, as far as human Frailty will permit him, faithfully and without Scandal, to advance the Condition, Honour, and Peace of the Community; *such a Man*, I will be bold to say, has,

has, with a good Conscience, discharged his Promise with regard to the Observation of such Statutes; and has, according to the Rules of Justice and Honesty, discharged the Debt, which he obliged and bound himself to pay. And, this must also be understood to extend to the public Laws of a Kingdom.

19. And, this may suffice to be said concerning the first Class of Cases. But, lest any of you should imagine, That, I am, therefore, willing to allow too great a Licence to swear; because, I so often affirmed, That, this or that Kind of Oath is not unlawful; I think it necessary, in due Time, to inform you; that, I neither this Day affirmed, nor shall hereafter alledge any Thing with an Intent to insinuate, that, I thought it lawful for any Man to take an Oath at his own Will, and Pleasure; since I am very sensible, that, an Oath is a sacred Thing, and not to be taken or used, but upon some great and urgent Necessity; and then too, but very seldom, and with the greatest Reverence: But, I say, that, my Assertion ought to be understood every-where in this manner; namely, “ That, an Oath is not, for this or that particular Reason to which I refer, simply and in every Respect, unlawful. For instance; when I affirmed, that, an Oath which is Obstructive of some greater Good is not unlawful; or, that an Oath concerning a Thing indifferent is not unlawful; my Meaning was, that, it ought
not

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not to be concluded, that, *any Oath* is *simply* and in *every Respect* unlawful, (provided, it has *all other due Conditions*), merely for *this Reason alone*, that it is *Obstructive* of greater Good; or, because, it is *taken* concerning a *Thing indiffe-*
rent; or, *which* amounts to the *same Thing*, that there is not, on this Account, *any Impedi-*
ment to obstruct its being possibly lawful, pro-
vided, it be *otherwise* necessary, and has the *due*
Conditions and Qualifications, in *every other Re-*
spect, annexed to it.



THE

FOURTH LECTURE.

I. **H**AVING, in the preceding Lecture, dispatched the *chief* Difficulties that *more immediately*, and *peculiarly* related to the *Matter* of an *Oath*, I shall *now* proceed to the *Solution* of *such Doubts* as shall, in any respect, appear possible to be reduced to its *efficient Cause*. Now, the *efficient Cause* of an *Oath*, so far as relates to our *Institute*, is *twofold*; the *one*, which we call, “*the Agent*, whose *proper Business* it is to perform, or bring a Thing to *effect*; the *other*, that impels the *Agent* to operate, which we generally call, “*The impulsive Cause*. Again, the *Agent* is, either *more immediate* and *principal*, or *less Principal* and *more remote* from the *Effect*. For, since it is necessary, that *two Persons*, at least, should concur to the *Obligation* of an *Oath*, as *Terms* of *that Relation*; namely, the *Person* of the *Swearer*, who confirms his *Promise* to another by an *Oath*; and, the *Person* of *him to whom the Oath is sworn*, who requires, that, the *Promise* of *another* made to *him* should be confirmed by the *Interposition* of an *Oath*, and whom the most that follow *Cicero* call, “*Persona deferens*; It is evident, that,

both

both of these Persons must bear their *respective* Parts in this Matter: But, the Part of the Person swearing is the *Principal* and more excellent; and, of the Person to whom the Oath is sworn, *Secondary* only. For, in both of these Agents, the *Condition*, in the *first* Place, or, (if may be allowed the Expression), the *Idoneity* or *Fitness* of the Person may be considered; and then, the *Extent of the Obligation*. Those *Doubts*, therefore, are under this Kind of *efficient Cause* to be first considered, which arise from the *Defect* of some *Condition* that is *requisite* on the Part of the *principal Agent* to qualify, or render him, in a *particular Manner*, a *fit Person* for the *taking* of an Oath. Now, *two Things* are *principally* required to render a Man *fit to take an Oath*; namely, *rational Judgment*, and *lawful Power*. For, a Man ought to come to the *taking* of an Oath, not only with a *deliberate* and *considering* Mind, but also with a Mind *prepared* and *resolved* to fulfil the Promise. But, he can neither *deliberate* nor *consider*, who is not indued with *rational Judgment*; nor, can that Person *confidently*, and with *Effect*, promise any Thing, who is under the *Power* of another, and not at his own *Liberty*.

THE SEVENTEENTH
CASE.

2. The *first Doubt*, therefore, is, how far is the Oath of a Man, who wants the *Faculty of judging*, *Obligatory*? Now, since such a *Defect* may

may arise from *various Causes*; therefore, *various Cases* occur under *this Head*. The *First*, is, concerning *Children*, 'till they come to the *Use of Reason*. But, at *what Age precisely*, they arrive at *such Use of their Reason*, has not as yet been defined; nor can, in my Opinion, be *exactly ascertained by any*; because, *some come sooner to Maturity*, and *some later*, than *others*. The *Civil Laws*, indeed, of the *Romans*, as well as the *municipal Laws* of most *other Nations*, have fixed a *certain Number of Years*; under *which*, *Children* are neither to be suffered to take an *assertory*, nor compelled to take a *promissory*, *Oath*. Such, among *us* is the *Age of sixteen Years*, under *which*, no one is admitted, either as a *Witness* in our Courts, or required to take the *Oath of Allegiance*; nay, *every Oath*, taken by *such*, is *null and void* in Law. This Method is *Right*, and takes Place in the *external Court*; but, it does *not* obtain likewise in the *internal Court of Conscience*. *Children and Pupils* ought, indeed, to be trained up from their *Childhood*, by their *Parents and Guardians*, *maturely* to understand, and *seriously* to consider the *Force and Religion* of an *Oath*, and the *grievous Guilt of Perjury*, together with the *Punishments* due to it, to the *End*, that, *they* may the *more* diligently guard, not only against *polluting themselves rashly* with *so foul a Crime*; but, that they may, likewise, learn, from their *very Infancy*,

to

to restrain their Tongues from a wicked Custom of swearing. For, it can scarcely be imagined, what lawful or necessary Use Children can have for Oaths, not only, on Account of their Ignorance and Unskilfulness in judging; but also, because they are under the Power of others; unless, perhaps, they should be required by their Parents in whose Power they are, pursuant to their parental Authority and Right, to swear, faithfully to execute their particular Commands. Thus, (a) Fame reports Hannibal, when a Child of about nine Years of Age, to have been brought to the Altar by his Father Hamilcar at the Time of offering Sacrifices to the Gods; and there to have been bound by an Oath, to continue for ever an Enemy to the Roman Name. But, Alas! to our Shame be it spoken! Since the Time that domestic Discipline has every where ceased to be exercised among Christians; may you not every where hear, in the Streets and Highways, Children of both Sexes, even before they have learned to speak distinctly, without Fear, or Punishment, prophaning the sacred and tremendous Name of God with their unhallowed Mouths? A Vice this, of such an abominable Nature, that, when once Children are thoroughly infected with it, like fresh Vessels, which, once tainted with some filthy Savour, do for ever retain it; so, they can scarcely ever for-

(a) V. Liv. L. 21.

fake it, when they grow old. But, I will not let the Tide of my Grief and Indignation hurry me away to *another Subject*; and shall, therefore, *immediately* return to the Matter in Hand. I affirm, then, that, *the Oath of Children*, before they come, (as we call it), to *Years of Discretion*; or, before they are *capable of Guile or Dissimulation*, is, on Account of their *want of Judgment*, *neither Lawful, nor Obligatory*. But, *so soon as they are capable of Guile or Dissimulation*; and, are able, in *some*, though in never *so small a Measure*, to comprehend the *Nature and Force* of an *Oath*; which, *ordinarily*, and for the *most Part*, happens about the *seventh Year* of their Age, and in *many even Earlier*, in Case they be *very Forward*; or, in whom *Malice or Craft* supply the *Want* of Age; I say, *the Oath of Children*, although it should be, (unless perhaps *that single Case* of its being *required* by a *Parent* ought to be excepted), otherwise *wholly unlawful*; yet, when *taken*, is *Obligatory*, unless it should happen to be *otherwise* impeded or obstructed. The *Reason*, is, because, an *Act* in its own *Nature Obligatory*, such as the *Act of swearing* is, proceeds in *such* from a *Mind*, in *some Degree*, indued with the *Faculty of judging*.

3. The *second Case*, is, concerning *mad, and outrageous Persons*; and the *Third*, likewise, concerning *Simpletons, and Fools*. Now, it is a *Vice* familiar to *both* these *Kinds of Men*,
K unseasonably,

The EIGHTEENTH and
NINETEENTH CASES.

unseasonably, and even *without Thought*, to pour forth *Oaths* out of their unhallowed Mouths. A *Practice*, which though we ought to pardon, and, which perhaps will *not* be imputed to them as a *Sin* by that God who is extremely merciful, and expects *not to reap where he has not sown*, because, it proceeds from an *invincible Error* of the Mind; yet, it is certain, that, our Saviour declared, “*that every Oath cometh of Evil*, that is, proceeds from the *Instigation* of the Devil, and the *common Depravity* of the human Heart, whereby *all the Sons of Adam* are led to be inflexible to Good, but extremely prone to every Kind of Evil. Now, to make a *Doubt*, whether, such *Oaths* be lawful, or unlawful, is entirely vain and useless. Because, to weigh and consider, whether a *Thing* be lawful or unlawful, is the *Business* of those only, who are able, in some Measure, to judge concerning Things already, or, that are to be hereafter, performed, whether they be conformable to their proper Rule or not, that is, whether they be conformable to the *Law of God*, and to *right Reason*. But, since those, who are mad and impotent of Mind, are destitute of that Faculty, would it not be in vain to lay them under any Law? Nay, would not He rather appear mad with all his Reason, who should require from a Madman an Account of his Actions? So that, it plainly appears, that, such *Oaths*, as they are *Acts* of Madmen, are in

no Sort obligatory. But, should a Man, otherwise outrageous and distracted; yet, at certain Times enjoy some *lucid Intervals*, so as to be, during *them Intervals*, in his *right Mind* and *Senses*, it is certain, that, *Oaths* taken by him during *such Time* as he happens to enjoy the *right Use* of his *Reason*, do no less bind him to perform them, than if *they* had been taken by a Man of a *sound* and *sedate Mind*.

4. The fourth and fifth Cases are, concerning the The TWENTIETH, and TWENTY-FIRST CASES. *Obligation* of an *Oath*, by which, either a *drunken Man* promises, or an *angry Man* threatens, to do something; which, when *calm* and *sober*, they would *not* be willing should be carried into *Execution*. The *Reason* of *Doubt*, here, is, that, since, in order to render any *Oath* obligatory, some *Judgment* of a *deliberate Mind* is *requisite*; *Drunkenness* and *Anger*, both of which are *short Fits* of *Madness*, do so trouble and disturb the *Judgment*; and, for a *Time*, take away the *Use* of *Reason*, that, 'till the *drunken Man* sleeps himself *sober*; and the *raging Distemper* of the other's *Mind* somewhat *subsides* and *cools*; neither of them do, indeed, seem to differ much from a *Madman*. Now, with *Regard* to *such Oaths*, this is, in the *first Place*, certain, that, *neither Kind* of them can be excused from *Sin*; but then, whether *Drunkenness*, or a *violent Fit* of *Anger*, do *aggravate*, or ra-

ther extenuate the Sin committed in that Act of swearing, is not sufficiently agreed upon by all Parties: Nor, indeed, does it appear, that, a simple and satisfactory Answer can, in a single Affirmation, be given to that difficult Question; because, the forming of a Judgment in this Case depends very much upon Circumstances. But however, this is a Question that belongs not properly to our Institute. The Reason and Nature of the Doubt evince it to be highly expedient, that, neither a drunken, nor an angry Man take any Oath at all; because, neither of them can, in such a Distemper or Madness of the Mind, swear in Judgment; but, must necessarily blab out rashly, whatsoever Wine and Indignation, (which are outrageous Counsellors), prompt them to; which, when sober and in cool Blood, they would wish unsaid and unsworn, and be willing to redeem at a great Expence. But still, this Distinction must be made concerning the Obligation. For, in the first Place, the Thing sworn to, is, either unlawful, or lawful and honest. If it be Unlawful, (as it generally happens, especially in such Oaths as drop from Persons transported by the Violence of their Passion, and blinded with too great a Lust of Revenge), it is evident, that, such Oath is not obligatory. For, as has been already sufficiently demonstrated, "There can be no Obligation to a Thing unlawful. Therefore, (b)

(b) 1 Sam. xv.

Abigail gave prudent Advice to David, and he piously pursued it, when, after he had been greatly provoked by the unworthy Reproaches of ungrateful Nabal to swear, that, he would destroy him and his whole House; yet, laying no Stress upon such Oath, he restrained his Hands from Blood. But, if the Thing sworn be Lawful, as those Things frequently are, which drunken Men boastingly promise; then, we must consider, in the second Place, what, and how great the Excess of Drunkenness was; whether, in such a Degree as only to impede or disturb the Use of Reason; or, in such, as entirely to deprive the Man of his Understanding, and by so doing, to transform him, as it were, into a wild Beast. Whoever has taken an Oath, when entirely deprived of the Use of his Reason, is obliged, so soon as he becomes sober and returns to his right Mind again, seriously to repent, both of his Drunkenness, and of his rash Oath; but, is not obliged to the Performance of what he swore he would do; because, at the Time of swearing such Oath, he was not indued with such Use of Reason as is necessary to form a Judgment of Things that are to be performed with some Deliberation of Mind. But, when the Use of Reason is obstructed only, and, not so intirely taken away, but that, the Man, though Drunk, may yet, in some Sort, be able to Judge and determine concerning Things that are to be done; He seems also, in some Sort, to be

obliged to the Performance of, at least, some Part of his Oath, if it may possibly be done without doing some very great Damage or Inconvenience to himself; and that, not only on Account of the antecedent Deliberation which is sufficient to induce an Obligation; but also, in some Measure, to punish him for his Rashness; that, he may, for the Future, learn to be wise, and live a sober Life; and, lest he rashly commit that when Drunk, which may greatly afflict and fret him when Sober. But, should the fulfilling of the Promise turn greatly to the Loss or Disadvantage of the Party swearing; as, if a Man, when Drunk, should swear, that, he would sell the Farm, by which he maintains his whole Family, at a very small Price; such a one seems not to be obliged thereby; and that, for this Reason, namely, that, there can scarcely be any more certain Sign of a distracted and distempered Mind, than when a drunken Man magnificently and vauntingly promises to do somewhat that is connected with some great Evil or Damage to himself. Now then, since his Mind was not fully and altogether free at the Time of swearing, it follows consequently, that, the Obligation cannot be full and perfect. It would, therefore, perhaps, not be the worst Issue to which the Matter, in this Case which is not in itself Good, may be put, for both Parties, that is, for the Party swearing, and the Person to whom the Oath is sworn, to submit the whole

whole Affair to the Judgment and Discretion of some good and prudent Man, who may, from the Circumstances, determine, what Part or Proportion it is fit the Swearer should perform of his Promise; and, what he should suffer as a Punishment, both for his Drunkenness, and for his Rashness proceeding from it.

5. The Second Doubt, THE TWENTY-SECOND CASE.
is, concerning the Oath of a Man, who is not at his own Liberty, but under the Power of another. As, if a Son, or a Pupil, who are under the Power of Parents and Guardians; or, a Servant, who is in the Power of his Master; or, a Wife, that is under the Power of her Husband; or, a Subject, who is under the Power of some Prince; or, a Soldier, who is under the Command of his General; or, any other Person whatsoever, who is so subjected to the Power of another, that he is not at full and free Liberty; I say, if any one of these should take any Oath without the Permission of his Superior, the Question is, Whether, and how far, is such Oath obligatory and valid? I answer, that, it is not lawful for any one who is under the Power of another, determinately to take an Oath with respect to those Things in which he is subject, without the Consent of his Superior, either expressed, if it can conveniently be had, or, at least, without his tacit Consent, that is, where the Person swearing can probably presume, that

the *Superior*, if *consulted*, would *not* oppose or contradict it. Should he do *otherwise*, he would certainly sin by taking such Oath: Nor, is he *obliged* to the *Performance* of what he has sworn: Nay, he is bound *not* to perform it, unless the *Superior*, when he comes to the *Knowledge* of the Matter, grants him *Liberty* to do it. The Sum of what is copiously explained by *Moses* throughout this whole *Chapter*, in the Case of a *Vow*, or an *Oath*, (for, as to their *obligatory Virtue*, they both appear to be one and the same from *this* very Verse), taken by a *Virgin* while in the *House* of her *Father*; or, by a *Woman*, while in the *House* of her *Husband*, is *this*, " That, the *Vow* of a *Virgin*, if her *Father* knew, and did *not* disallow or contradict it, is *Obligatory* and *Valid*; because, by preserving *Silence*, he *seems* to have *consented* to it; but, had he disallowed or contradicted it, *then*, it would be *utterly* null and void. The *same Judgment* or *Determination* must likewise be *made*, by Way of *Analogy*, or *Resemblance*, concerning *all* other Persons, who are in the *Power* of *others*, so far as *they* are in *their Power*, as evidently appears from *what* has been already said, for *these two Reasons*; *First*, Because, *He* does an *Injury* to another, who, as it were, in his *own Right*, takes upon him to determine concerning Things that are *entirely* the *Right*, and in the *Power* of *another*. But, *no Man* is bound to do

do an *Injury* to another, as appears clearly from our *fifth Hypothesis*; because, “*There can be no Obligation to a Thing unlawful.*” Secondly, Every one is, in *Duty*, bound to be subject to his Superior, and to obey his *Will* in all Things wherein he is superior; which *Obligation*, according to our *third Hypothesis*, “*No subsequent Oath can cancel or disannul*”; and consequently, it must be affirmed, That, the *Oath* of a Person who is under the *Power* of another is not, without his *Consent*, either *lawful*, or *obligatory*.

6. Yet, this *Conclusion* is not so absolutely to be understood, but that it may admit of two *Exceptions*: Of which, the one regards the *Person* of the *Swearer*; the other, the *Consent* of the *Superior*. As to the *Swearer*, we must know, that, there is scarcely any one who enjoys the *Use* of his *Reason*, so absolutely and fully under the *Power* of another, but that he may, at least, in some Things, be justly said to be at his own *Liberty*. And, as to these, every Man may take such Measures as he shall think proper, even without consulting his *Superior*; insomuch, that, he may, by some *Act* of his own, without *Licence* from the other, induce an *Obligation* upon himself. The *Servant* of *Caius* ought not to bestow his *Labour* to *Titius*, or give or lend him any Part of his *Master's* Goods, without the *Consent* of *Caius* himself; because, the *Master*
of

of the Family is invested with the *sole Power and Command* in such Things as relate to the *Performance of Service or Obedience*; to the *Disposal of Goods*; and, to the *Administration of every other domestic Affair*. Yet, the *Servant of Caius* may promise or bestow *Titius* some Part of his own (c) *private independent Possession*; or, the *Son of Caius* may do the *same* with regard to his own *distinct Substance*, or *Goods gotten in War*, even *without consulting or asking the Leave of Caius*; and, if they confirm their *Promises* by an *Oath*, they are, even whether he will or no, *obliged to stand to such Promises*; because, *both of them have Power, freely to dispose of their own distinct Properties*, and are, in this Respect, at their own *Liberty*. Secondly, As to the *Consent of the Superior*, we must know, that, in order to *ratify an Oath* taken by a *Subject or Inferior*, an *express preceding Consent* is not necessarily required; a *tacit Consent*, whether *preceding, or subsequent*, being *sufficient for that Purpose*. By a *tacit antecedent Consent* I mean, when, either on Account of the *Equity, or Smallness of a Thing*; or, for *some other probable Reason*, it may be well *presumed*, that, the *Superior*, in case he had been consulted, would have *consented*; or, at *least*, would not have *opposed or forbidden it*: As, if the *Wife of Caius* should,

(c) Servus quod juravit, servet, si peculii Administrationem habuit. L. 20. ff. de jurejurad.

in his Absence, or *without* consulting him, give some naked poor Man an *old Garment*; or, give a *Beggar* an *Alms*; or, as if his *Son* or *Servant* should, at the Request of *Titius* his Neighbour, lend an *Ox*, or *Wain*, or the Use of any *other* rustic or domestic Instrument, or Piece of Furniture; or, should lend him their Assistance to *build* a House; to *gather* in his Fruits; or, to *do* some *other* necessary Piece of Work. By a *tacit subsequent Consent* I mean, when, a *Superior*, in whose *Power* it is to *break* any Promise *rashly* made by one *subject* to him, in case he shall think it *convenient* so to do; yet, after he comes to the *Knowledge* of such Promise, does not *immediately* and *openly* contradict it, nor discover, by *any certain Sign*, that, what was *before* done was so disapproved of by him as that he would *not* have it performed: According to *what* is prescribed by *Moses* in the 6th, 8th and other *Verses* of this Chapter; where, in order to make *void* the *Vow* of a *Wife* or *Daughter*, not only the *Dissent* of the *Father* or *Husband*, but their *open and early Intimation* thereof is also required. It is *not*, therefore, sufficient for a *Father*, in order, (as the *Schoolmen* speak), to *irritate*, or *disannul* the *Vow* of a *Daughter*, to affirm, that *such Vow* was *displeasing* to him; No; but, *He* must also *openly oppose* and *contradict* it: For, as we read at the 6th and 9th *Verses*, if he *refuses* to *ratify* it, "*it shall not stand*; or, as we may find

find at the 13th and 16th Verses, "*If he makes it void, it shall be made void*"; as if he had said, It is *incumbent* upon him *constantly* to withstand and shew his *Dislike* to the *Fact*; and, by interposing all his *Authority*, to *prohibit* the *Performance* of what was promised. It is *also* required, as appears from the 6th, 7th, 8th, 9th, 13th and 15th Verses, That, he should do it *immediately*, "*in the very Day that he heard of it*"; as if he had said, if he *dissembles* his *Dissent*, even but for *one Day only*, he *establishes* the *Vow* for ever; for, He that *slowly* expresses his *Unwillingness*, with regard to any Thing, must be esteemed, for *some Time*, to have *willed*, and *approved* thereof.

7. Having thus considered
 The TWENTY-THIRD CASE. the Person of the Swearer, as of the *principal Agent*; in the next Place, the Party to whom the Oath is sworn, which, next to the Person swearing, is to bear the *secondary Part* in this Matter, comes to be considered. Now, concerning this Person, the *Third Doubt* arises; where *two Cases* occur; namely, either with respect to his *Authority*, or to his *Faith* or *Credit*. The *first Case*, therefore, is, where a *Doubt* arises concerning the *Authority* of him that requires an Oath from us. If He be a *lawful Superior*, and is acknowledged by us to be so, and requires *no other Oath* from us than what has been appointed

ed by Law; or, has been established by long and approved Custom; no Man can doubt, but that such an Oath may, both lawfully be taken, and ought faithfully to be performed. But, where the Person, who requires the Oath, appears to do it without any just Right of his own, but to usurp a Power that belongs not to him, it may not without Cause be doubted, whether, it may be lawful to take an Oath so administered or tendered by him; and, if we take it, whether, and how far, are we obliged to perform it? To which I answer, First, That, a Man of Piety and Fortitude ought, as much as he possibly can, always to decline and avoid all Oaths imposed upon him by one not vested with a lawful Power, or Authority; not only, because, it is customary with those that are armed with Power, to compel such as are subject to their Tyranny, to promise unjust Things; but also, because, every Man is obliged, with all his Might, to maintain and defend his own Right and Liberty, and not tamely give himself up, as a Slave, to the Tyranny of another. But, secondly, Should Force be applied, beside Command, which a Man could not resist; insomuch, that, there could be no Room to refuse, without running the greatest Peril, it must be asserted, that, a pious Man may take such an Oath, in order to avoid some very great and grievous Damage or Inconvenience; yet, with great Difficulty and Sorrow, as well

as

as with *some* Intimation of a reluctant Mind; provided *still*, that the Words of the Oath, (which is very rare in a Case of *this* Nature), contain *nothing* in them *unlawful*, or *contrary* to the *public* Laws, or *derogatory* from the *Right* of some *third* Person: Otherwise, he *ought* to *refuse* it, and suffer *all* *Extremities*, even to the *Hazard* of his *Life*, rather than bind *himself* with a *dishonest* or *unlawful* Bond. *Thirdly*, We must affirm, that, whosoever takes an Oath, *administered* by a Person that is *not* invested with a *just* or *lawful* Authority, but, in *no* other respect *Faulty*, is *certainly*, to *all* Intents and Purposes, *bound* to *perform* all that he has sworn.

8. The *second* Case is
 The TWENTY-FOURTH CASE. *this*; Suppose, the Man, to whom an Oath is to be taken, should be an *Infidel*, a *Heretick*, or *one* that has *heretofore* broke his *Faith* with us? I answer, *First*, that it is *lawful* to make a *Promise* to an *Infidel*, an *Heretick*, or *perjured* Person. *This* was done by *Isaac* and *Jacob* the *Patriarchs*, as well as by (d) *Joshuah* and the *Princes* of the *People* of *Israel*, who entered into a *League* with *Strangers* and *Infidels*, and *confirmed* their mutual *Promises*, on *both* Sides, by *solemn* Oaths. *Secondly*, I say, that, *Faith* given to *such* ought, by *all* Means, to be *preserved*. We are wont to object to the *Papists*, that *they* teach and assert,

(d) Gen. xxvi. 28. and xxxi. 44, &c.—Josh. ix. 15. 19.

“ *That*,

“*That, no Faith is to be kept with Hereticks;*” whereat the modern (e) Jesuits exclaim and say, that, we do them great Injury and Injustice. For, *they, truly, are ashamed, openly to profess an Opinion in this bright and learned Age, so contrary to all sound Reason, and so pernicious to human Society.* But, *many of our Writers have evinced, that, some Doctors of that Church have, in the Writings which they have published, maintained and defended that Conclusion, without any Prohibition, Censure, or Correction of the Books, in which it is asserted.* But, *should they all deny it in Words;* yet, *this, at least, is certain, that, if we may judge of their Opinion in this Matter, either from the Principles of their Doctrine, or from their Actions, and the Accounts of Facts related by Historians of their own Party and of undoubted Credit, they have no sort of Reason so confidently to exclaim, that, they are slandered and aspersed by us.* No; for, by their very *Willingness to shift off and disavow such an Opinion, do they not tacitly acknowledge it to be, either False, or Impious?* The Prophets sometimes blame and rebuke the Kings of Judah, but more especially, *Ezekiel throughout almost his whole 17th Chapter, because, “They had not kept their Faith or Oaths with the Kings of Babylon.”* A Passage *this, very remarkable,*

(e) Becan. Manual. 15.

(e) Nullo, nullo modo fides servanda Hereticis, etiam Juramento firmata. *Simanca.*

and which, if I remember right, *St. Chrysostom* has somewhere very *copiously* and *beautifully* explained. Nay, the *Faith* of (*a*) *Regulus*, and of some others, is rendered *illustrious* in *Heathen Histories* for this very Reason, that they, at

(*a*) *Marcus Atilius Regulus*, when a second Time Consul, was surprized in *Afric* by *Xanthippus* the *Lacedemonian*, and made a Prisoner, (*Amilcar*, Father of *Hannibal*, being the General of the *Carthaginians*), and was sent by the *Carthaginians* to the Roman Senate, upon solemn Oath given, that, unless some remarkable Prisoners were restored to them, he should himself return back again to *Carthage*. Now, as soon as this Man arrived at *Rome*, he could not but perceive what appeared to be his Interest, but withal was persuaded, (as the Event declared), that it only appeared so. The Case was thus. Here he might have stayed in his native Country, and have lived at Home quietly with his Wife and Children; might have judged his Misfortune, received in the War, no more than what all Men in that State are liable to; and, might still have continued in his old Degree of Honour among those of consular Dignity. — Well; but pray, what did this *Regulus* do then? He came into the Senate, and told them what it was he was sent about, and refused to give his own Vote in the Case; forasmuch, as he was not to be counted a Senator; as being by Oath under the Enemy's Power. And, in his Speech, which he spoke to the Senate upon that Subject, (Fool that he was, some will be ready to say, and an Enemy to his own Interest!) he told them, "It was best not to give up their Prisoners; that they were young Men, and might make able Leaders; but that he, for his Part, was grown almost useless, and worn away with old Age." The Senate were so far persuaded by his Speech, that, they resolved, the Prisoners should be detained in Custody, and he himself returned back again to *Carthage*; not all the Love which he had for his Country, his Friends, and Relations, being able to detain him. And, tho' he knew well enough, what a barbarous Enemy, and what exquisite Torments he was going to return to; yet, he thought it his Duty, whatever came of it, not to violate his Oath. I think, (says *Cicero*,) he was in a better Condition, therefore, even whilst he was murdered by being kept from sleeping, than ever he could have been, had he starved at Home, and lived under the Scandal of being an old Captive, and a perjured Nobleman. (*Tully's Offices*, L. 3. c. 26, & 27.

the

the certain Peril of Death, thought it *their Duty* to perform what they had promised upon Oath even to *Enemies*, and to *Carthaginians*, the most perfidious Nation upon Earth. *Silius*, on this Account, bestows this beautiful Elogium on *Regulus*, calling to him, by an *Apostrophe*,

Shan't *Faith*, preserv'd with Foes of *Punic Name*,
To distant Ages waft thy glorious Fame?

But, to *this* you will perhaps object those common Expressions, namely, "That, it ought not to be accounted *Deceit*, to deceive a Deceiver; or, to act the Crete with lying Cretans. To which, those two Sayings, alledged by (f) *Grotius* to the same Purpose, may be added; namely, the one of *Brutus*, mentioned by *Appian*, "That, the Romans, observe no Faith nor religious Tye of an Oath with Tyrants;" and the other, of some old (2) *Tragic Writer*, where one says, "You have broke your Faith; to which another answers, "which I neither have, nor ever will give, to any false or faithless Person. Now, to this Objection I answer, that, these Sayings,

(f) De jure Bell. 13.

(2) That Saying of the Poet *Accius*, indeed, is good, "I neither am, nor have been tied by Oath to a treacherous Deceiver;" but, it is therefore so, because, when *Atreus* was brought upon the Stage, he was to make him speak that which was suitable to his Character. But, if once Men begin to lay down this for a Maxim, "That, Faith, when given to those who are Treacherous, is not to be kept; they had best have a Care, that this be not made a Refuge and Cover for Perjury. (Tully's Off. B. 3. c. 29.)

taken from *Common Life*, seem designed, rather to shew, what the *Bulk of Mankind* use to do, than what they ought to do. Or, if they should be admitted to be true, they can *only* be allowed, where an *Oath* is taken under a *Condition*, either expressed, as if I should say, “*I swear I will give you the Sum of an hundred Pounds, provided you will redeem the Land you mortgaged to me within the Space of a Month;*” or, at least, under a *tacit Condition*, as, when two Men bind themselves by *mutual Oaths* to perform the Promises they have made one to another, on Account of *mutual Respect*. As for Example, suppose *Chremes*, the Master, should swear, that he would give *Sofia* his *Servant*, the Sum of ten Crowns yearly; and *Sofia*, in return, should swear, that, he would serve him for the Space of eight Years: Now, *He* of the Two, who should *first* violate his *Faith*, would immediately *absolve* or *free* the other from the religious Tye of his *Oath*. But, should two Men mutually bind themselves in Promises of different Kinds, or not at the same Time; or otherwise (g), without *mutual Respect*: If one of them should break his *Faith*, the other would not thereby be freed from his *Obligation*; but, both of them would be obliged to observe what they had respectively sworn, although one of them

(g) Frustrâ quis fidem postulat sibi Servari ab eo, cui fidem à se præstitam servare recusat. Rex juris in sexto.

should

should *fail* in the Performance of *his* Part. For Example, suppose a *King* should swear *simply*, and *without respect* to the Allegiance or Fidelity of his *Subjects*, that, *he* would govern his Kingdom *justly*, and according to the *Laws*; and suppose, the *Subjects* should, at *another* Time, swear *simply*, and *without Respect* to the Office or Duty of a *King*, that, they would yield him *Allegiance* and *all due* Obedience; *both* of them are *obliged*, *faithfully* to perform their *own* respective Duties, though *one* of *them* should *fail* in the Discharge of *his* Part: Inſomuch, that, neither would the *King* be *absolved* or *freed* from his *Oath*, though the *Subjects* should *not* yield *due* Obedience to him; nor, would the *Subjects* be *freed* from *their's*, though the *King* should *turn* *aside* from the *Paths* of *Justice*.

9. Hitherto we have treated only of the Condition of both Persons of the Agents, namely; of the Person swearing, as of the Principal; and of the Person to whom the Oath is sworn, as of the less principal Agent. The fourth Doubt now follows, concerning the Extent of the Obligation with regard to both these Persons; where two Cases occur. The First Case regards the Person of the Swearer, "Whether, and how far, " does an Oath oblige the Heirs and Successors of the Swearer? For Example; Caius, having bought the Land of Titius, swears *simply*, that,

The TWENTY-FIFTH CASE.

he will pay him the Sum of an hundred Pounds within the Space of six Months. In the mean time *Caius* dies. Now, the Question is, whether the *Heir* of *Caius* be obliged, by Virtue of the Oath taken by *Caius*, to pay the Money that was promised? To which I answer, that the *Heir* of *Caius* is, indeed, obliged to pay it, on Account of the Thing itself which gave occasion to the Oath; inasmuch, as he enjoys the Benefit of that very Land for which the Money was promised. For, the *Heir*, who inherits the Estate of the Person deceased, is, by right, bound to pay his just Debts. And, indeed, it is very just, that the Inheritance should pass with all its Incumbrances. Yet, the *Heir* is not bound to this, by Virtue of the Oath taken by the Deceased, in such manner as that, if he did not pay it, though he might, perhaps, be termed unjust; Yet, he could not be deemed perjured also. The Reason of which is this; because, an Oath is a personal Bond, and induces a spiritual Obligation only in the interior Court of Conscience, but not a civil or temporal Obligation in the exterior Court of Law. But, in Things personal no Man is bound without his own Consent. If it should be said, that, *Caius* may, by his own personal Act, bind himself and his Heirs to perform any thing, as we daily see done in obligatory Bonds; and therefore, that it seems, by a Parity of Reason, that, he may bind himself and his Heirs too

by

by an *Oath*; especially, if *He* should in *express* Words affirm, that, he swore not only for *himself*, but, in behalf of his *Heirs* also. To this I answer, that, the *Reason* is not at all equal, or the *same*, in both Cases. Because, a *spiritual Obligation*, which subsists in the *Conscience*, must necessarily be *personal*; forasmuch, as every Man's *Conscience* is his own *Property*, and cannot pass to any other Person. But, a *temporal Obligation* follows a *Thing* temporal, which, in regard it can pass to another Person, it can, consequently, induce or lay an *Obligation* upon another: And therefore, an *Heir*, from the *Justice* and *Equity* of the *Thing*, but, not by *Virtue* of the *Oath*, is obliged to perform the *Promise* of the deceased Swearer.

10. The latter Case regards the Person of him to whom the Oath is sworn, and

THE TWENTY-SIXTH CASE.

'tis this, "Whether, *He* who swore, that he would do something for another, is obliged, after such Person's Death, to do it for his *Heir*, or *Successor*? I answer, that, he is ordinarily obliged to do it. Certain it is, that, the Swearer is obliged, if he expressly said, "That, he would do it for him, and for his *Heir*. He is also to be esteemed obliged, who has taken an *Oath* with regard to some *Dignity* or *Office*, although it be not actually expressed; because, the *Dignity* is not changed on the Account of the *Change*

of *Persons*. Hence it is, that, should a *Subject* or *Soldier* swear *Fidelity* to a *King*, or *General* of an *Army*, such *Oath* must be deemed to be made with respect to their *Successors* in the same *Dignity*. The same must be said also in a *Matter of Debt*, as well as in most other *Things*, in which some *Consideration* of *Duty* or *Contract* gave *Occasion* to the *Oath*. If you should ask, whence it comes to pass, that, the *Bond* of an *Oath*, since it is a *Thing personal* on the *Part* of the *Swearer*, is not likewise *personal* on the *Part* of him to whom the *Oath* is *sworn*, but passes to his *Heirs* and *Successors*: Or, which amounts to the same *Thing*, why can a *Man* bind himself to another, and to his *Successors*, although the *Successors* be not expressly mentioned in the *Oath*; but cannot bind himself and his own *Successors*, though they are expressly mentioned? I answer, that, the *Reason* of the *Difference* consists in this, that, in the former *Case*, a *Man's* own proper and peculiar *Obligation* is meant and spoken of; but, in the latter, only, the *Obligation* of another. Any *Man* can oblige himself *spiritually* according to his own *Will* and *Intention*; and, consequently, can, by his own *Act*, bind himself as well to the *Successors* as to the *Person* of another; but, no *Man* can lay an *Obligation* upon another, unless the other willingly consent to it; and, consequently, cannot, by his own *Act*, *spiritually* bind any other beside himself. What I offered in answer

sworn to the Doubt in this Case; namely, that, the Swearer is ordinarily obliged, I asserted for this Reason, because, it may sometimes happen, that, he may not be obliged. For, since a Judgment ought to be formed concerning the Intention of the Swearer, principally from the Nature of the Thing and Subject Matter; it is plain, that, where, from the Nature and other Circumstances of the Thing promised, it may probably be presumed, that the Swearer intended to make a personal Promise only to him to whom he swore, and not likewise to his Successors, there, the Obligation of the Oath passes not to the Successors.

II. But, *this is sufficient* to have been said concerning the *acting Causes*; I proceed now to the *Impulsive*; which are, partly, *internal*, and partly, *external*. I call those *internal*, when a Man, through the mere Motion of his own Will, and without the Impulse of another, freely offers himself to take an Oath; or, when through some violent Transport of Anger, Love, or some other Passion of a disturbed Mind; or, when, even out of the mere Lust of sinning, or a certain impious Custom of swearing rashly, and without Judgment, he frequently chequers his Discourse with Oaths: A Vice this, which for the Grievousness, and frequent Commission of it, I could wish were oftener and more sharply reprov'd in our Sermons from the Pulpit. This,

The TWENTY-SEVENTH CASE.

I find, was *diligently* and *very severely* done by that pious Man *St. Chrysostom* in his Time; lest, by the *most just Judgment* of God, (b), “*The Land should mourn on Account of Oaths; and, the Lord should swear in his Wrath, that, He would not hold them Guiltless who treat his awful Name with so great Contempt as not to be afraid to invoke his sacred Majesty, as a Witness and a Judge, upon every Occasion, without any Necessity. But, there is no Need of my saying much concerning the Nature of Oaths of this Kind. Every voluntary Oath is certainly prohibited, unless there should be some very great and necessary Occasion for it. It is worth our while to hear what St. Augustine says of himself, “ I swear, says he, when I see, that I am not believed; but, I labour against it, ’till I am compelled by great Necessity; and see, that the Person, who does not believe me, forbears to dispatch what he does not think fit to credit;” as if he had said, then only must we swear, when it is expedient and necessary, that we should be believed, and would not be believed, unless we had sworn. And, in this Case, (in which alone ’tis lawful), an Oath voluntarily taken is Obligatory, even in the highest Degree; in regard, no Bond or Obligation binds more closely and inviolably than that, which we willingly and freely take upon ourselves.*

(b) *Jos. ix. 15, &c.*

12. Having thus dispatched the *Internal*, I proceed now to the external impul-

The TWENTY-EIGHTH CASE.

sive Causes, which are chiefly two, namely, *Fraud*, and *Force*. The *fifth Doubt*, therefore, is, concerning the *Obligation* of an *Oath* which is obtained, or into which we are inveigled, by *Fraud* and *Craft*; that is, when a *Man*, deceived by the Words or Actions of another, swears, that, He will do something which, had he not been deceived by the other, he would not have sworn.

(3) Of this we have a memorable Example in

(3) *Puffendorf* observes, that, since in Promises and Pacts, Consent grounded upon *Mistake*, is not effectual towards producing an *Obligation*, therefore, an *Oath* is not binding, in Case it be evidently made out, that, the Person who swore supposed some Matter to be otherwise than it really proves to be; and which, if he had not thus supposed, he would not have taken the Oath: Especially, if his *Mistake* was caused by the *Deceit* of the Party to whom he swore. For, here the Point supposed was in the Nature of a *Condition*, which failing, all that was built upon it, falls of Course. Thus, if a Person brings me some very welcome News from a remote Place, in Consideration of which I solemnly swear to reward him; in Case I afterwards find his Relation to have been false, my Oath shall hold no Tie upon me. *Grotius* (L. 2. c. 13. S. 4. N. 1.) adds, "If it be doubtful, whether, a Man would not have sworn altho' he had not been thus mistaken, then, he shall stand to his Oath; because, Simplicity and plain Meaning are the most agreeable Attendants of Oaths; and all Tricks and Evasions are strictly to be banished from them: And likewise, because, the Promise was not built upon that Mistake only, tho' such a false Prospect might be the Occasion of it's being expressed in larger Terms." But, this doth not clearly settle the Case. For, who shall be the Judge, whether in this Case, abstracting from the Mistake, the Promise would have been nevertheless made? Certainly, not the Party towards whom the Oath

in (i) *Joshua* and the *Princes* of the People of *Israel*, who, being deceived by the *Gibeonites*, who

(i) *Jos. ix. 15, &c.*

Oath was address'd: For, how is it possible, he should be able *rightly* to discern, what Mind the *other* Person should have been of, upon Supposal of *such*, or *such* a Condition? But, neither can the Person who swore, give a full Determination of this Difficulty; since we are not wont to be equally pleased with the *same* Things proposed at *different* Times, or at the *same* Time in *different* Manners. It seems probable, therefore, that, even *such* an Oath is *not* valid; at least, so far as it is founded upon *Mistake*. Yet, if the Party who made it, thinks he shall pay some Kind of Regard to the *Honour of God*, in not receding from it *altogether*, he ought to judge by the Condition of his Affairs, how *far* he may conveniently go in the Performance. And, whilst we are speaking of *this* Case, it will not be improper to make a Reflection or two on the Oath which *Joshua* performed to the *Gibeonites*. Where, we may first observe, that, the Subtlety used by *that* People was *not* culpable, nor did fall under the Notion of a *Lye*, strictly so termed. For, who will blame a Man for endeavouring by some *Fiction* of Speech to *preserve* his *Life* from an Enemy bent upon his Destruction? Nor, properly speaking, was *this* Stratagem the Cause of *any* Damage to the *Israelites*. For, what doth a Man lose by being hindered from shedding the Blood of another Person, whom he may nevertheless spoil of *all* his Possessions, and drag in to perpetual Servitude, so weakened and disarmed, as to be incapable of *future* Opposition or Resistance? The whole Point, therefore, turns upon *this* Question, whether, or no, it was the *express* Command of God, that, they should kill *all* and *each* of the Inhabitants of *Canaan*, without Distinction; even *such* as should *voluntarily* submit to their Yoke, and from whom they could apprehend *no* Danger hereafter? If this be absolutely affirmed, *Joshua's* Oath was *void*. For *then*, the *only* Use of it would have been to *Evade* a divine Injunction; that is, *Joshua* would have invoked God to punish him if he did *not* break his Command. Nor, can it be urged, that, *Joshua* was, therefore, willing to *keep* his Oath, lest it should somewhat *abate* the Awe and Reverence towards the divine Majesty in those Nations, to see him break a *Covenant* which he had called God to attest. For, the Inconvenience in this Respect would have been the same, had he neglected to put the divine Command in Execution. *Grotius*, therefore, is of Opinion, that,

who feigned themselves to be *Strangers* that had come from a *Far-country* in order to procure a *League*

that, the *Order* in *Deut.* vii. 2. and xx. 16. is to be understood with this Limitation, First, "unless any People should submit upon the first Summons;" which he urgeth many Reasons to confirm. Mr. *Selden* likewise shews at Large, (L. vi. c. 16), That, the utter Slaughter and Extirpation of those People, was, rather a Permission to the *Israelites* than a Command. And, others think this the more probable, because, the Reason assigned for that Commission against the *Canaanites*, was, partly, lest the *Israelites* should imitate their Idolatry, being then strangely prone to foreign Superstition; and partly, lest the antient Inhabitants, if left in any considerable Numbers, should gain Strength to turn out their new Guests; especially, in Case they were allowed to live with them upon equal Terms. This Danger, therefore, being once surmounted, they judge, it would have been no Fault to admit some to Mercy and Favour; especially such as should abjure their idolatrous Worship. However this were, 'tis plain, that, *Joshua*, upon Discovery of their Fraud, interpreted his Oath in a more strict and severe Sense. They had professed themselves the Servants of the *Israelites*, a Phrase common with the eastern Nations; and had desired a League. *Joshua* had promised them their Life, and had entered into a League with them, according to their Petition: And, by this Agreement, (had they proved such as they pretended; that is, none of the Number of those Nations, which God had designed to Destruction), they had been left in Possession of their Goods and Liberties. But, on Account of the Deception they had used, he insists strictly upon his Words, and, as it appears, left them nothing but their Life and necessary Maintenance.

But, upon the Limitation of *Grotius* above-mentioned, namely, "unless any People should submit upon the first Summons;" *Barbeyrac* observes, in his Notes on *Puffendorf*; "That, in this Hypothesis there is more Difficulty. For, when *Joshua* knew how Things were, he still certainly determined to receive the *Gibeonites*, not to treat with them as Equals and make them his Allies; but, as Tributaries, or at least, as Slaves to the Children of *Israel*. So that, he could not dispense with his Word, tho' an Oath had not intervened in the League concluded with them. But, Mr. *Le Clerc* has fully proved, that, *Grotius* is mistaken in his Notion, and confutes him thus. The Law expressly excepts the seven Nations of

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League with the People of God, admitted them into *such* League, granting them *Peace*, and confirming

of the *Canaanites* from the Number of *such* as they ought to offer and give their Lives to, if they would yield at *Discretion*. (See *Deut.* xx. 15, 16.) Farther, there is a great Difference between a *Law* which orders the Destruction of a People for Fear, that if they were spared, they will ensnare their Conquerors into Idolatry; and a *Law*, which orders the Destruction of *All*; at least, every one of them that does not *voluntarily* become Tributary, and embrace the Religion of their *new* Masters. If the last had been *Moses's* Meaning, he would have delivered himself *clearly* in some Places where he mentions the *Canaanites*. This Matter ought to have been taught the *Hebrews* carefully; yet, we do not find *any* Footsteps of an *Exception* to that severe Order given by God in several Places to slay the *seven* Nations of *Canaan* with the Edge of the Sword, and make *no* Treaty with them. Again, the *Vow*, which the *Hebrews* called *Cherem*, was of *that* Nature, that, he that had vowed it could *not* redeem it, but it must be *destroyed*; (See *Lev.* xxvii. 29.) Now, it appears from several Places, that, the *seven Canaanitish* Nations ought to be looked upon as *such*, as may be seen in the *Law* mentioned, *Deut.* vii. 2. The *Examples* alledged by *Grotius* do not prove the *contrary*. For, *First*, the History of *Rahab* is a *particular* Instance, from whence *no* Consequence can be *drawn*. 'Tis *no* wonder if the *Hebrews*, to whom she had done so considerable a Piece of Service, *spared* her; and so much the *more*, because, she did it *before* they had declared War against her Country. *Secondly*, 'Tis certain, that, *Solomon* contented himself to make the Remnant of the *Canaanites* tributary to him, 1 *Kings* ix. 20, 21. But, the *Law*, which ordered the Destruction of *that* People, did not extend to *their* Posterity; it is enough to suppose, that it reached to *them* only, over *whom* God made them victorious in *Joshua's* Time, or after, 'till they were *well* settled, and in Possession of as great an Extent of Ground as was necessary. So that, if any of the *Canaanites* escaped into the neighbouring Countries, as the *Text* above-quoted seems plainly to prove, and they after fell into the Hands of the *Israelites* or their Posterity, they ought *not* to slay them without Mercy. *Thirdly*, As to what is said in the Book of *Joshua*, C. xi. v. 19, 20. That, there was *no* Town of the *seven* Nations of the *Canaanites* that would make Peace with the *Israelites*, because, God had hardened

firming it by an *Oath*. Yet, *Joshua* and his *Princes*, after they perceived they had been deceived,

dened their Hearts, so that they fought against *Israel*, that he might destroy them utterly without shewing them any Mercy: 'Tis not meant, as *Grotius* tells us, that, the *Israelites* were obliged to spare them which yielded to them at Discretion, but, that through the Influence of divine Providence, all the seven *Canaanitish* Nations, except the *Gibeonites* agreed together to Fight, and would not submit to the *Hebrews*, who would not have had the Courage to have put them all to the Sword without Mercy, as divine Justice had resolved to punish them, had they laid down their Arms and opened their City-gates to the Conquerors. These are Mr. *Le Clerc's* Reasons, to which, says *Barbeyrac*, I freely Assent. But, if this be so, what shall we say to *Joshua's* Oath? As for me, I can see no Reason but we may say, that, his Oath was rash and null in itself. The sacred Historian seems to grant the first, when he says, v. 14, That, they did not ask Counsel at the Mouth of the Lord, that is, of *Urim* and *Thummim*. In Truth, since he suspected Something, as appears from v. 7; he ought to have been cautious, how he engaged himself by Oath in a Matter of such Consequence, and in a Manner run the Hazard of opposing God's Command, which being so formal and absolute, the Artifice of the *Gibeonites* had been soon discovered; and then, *Joshua's* and the *Elders* of *Israel's* Oath had been of no Force. For, all the World agrees, that, an Oath engaging us upon a Thing unlawful is of no Force. Nevertheless, we see, that, *Joshua* thought himself obliged to keep his Oath. 'Tis possible, that, God, by some posterior Act, might ratify this Oath, tho' the holy Scripture, which omits many Circumstances, speaks nothing of this Ratification. The severe Punishment which God laid on the *Israelites* and Posterity of *Saul* for slaying the *Gibeonites* (2 Sam. xxi. 1. &c.) may give Ground to such a Conjecture, altho' the Action of *Saul* was otherwise inhuman and cruel; because, as I say, with Mr. *Le Clerc*, the Law which ordered the Destruction of the *Gibeonites* was not in Being. But, be that as it will, it is certain, that, a Superior may render an Act good, contrary to his own Prohibition, especially in the Case of a positive Law so rigorous as this we are treating of. Moreover, we know, that, the Civil and Canon-Law permit certain Acts confirmed by an Oath, to be valid, though forbidden by those Laws; and so, the Oath does not render them effectual of themselves. (See *Grotius*,

ceived, dared not to break or retract their Oath, by the religious Tye whereof they knew they were bound; but granted the Gibeonites their Lives as well as Peace, pursuant to the League which they had contracted with them; entering only into a Resolution to impose this Condition upon them, that, they should be employed in all
base

Grotius, L. 2. c. 5. S. 14. N. 4. and Puffendorf, L. 4. c. 2. S. 19.) Nor, is it hard to discover, why God would ratify Joshua's Oath. The Breach of so solemn a Promise made with an Oath, which is accounted by all People in the World a most sacred and inviolable Act, would have, doubtless, begat an ill Opinion both of the Israelites and God himself with all the neighbouring Nations, with which they were to live in Peace, so that, they would have had no Commerce with them, nor value their Word. Our Author pretends, that, the same Inconvenience will follow upon our Neglect to execute an absolute Order of God, but in vain; because, it is not in the least to be feared, that the Neighbours would make any such Reflection. They might think it Strange, that, the Israelites should treat the People they conquered with so much Rigour; but, they could never be offended, in the least, to see that Rigour mitigated by the Sanctity of an Oath.— But, Mr. Le Clerc has changed his Opinion, as appears from his Comments upon the other Books of the old Testament printed in 1708, where he says, that, the Israelites did Ill in not informing themselves fully of the Place from whence the Gibeonites came, altho' these last might use any innocent Arts to save their Lives; but, he believes, that, they did not insert that Clause in the Treaty, but it was made upon the Supposition, that the Gibeonites were a People who dwelt at a great Distance, upon which Account it was null. But, the Israelites not insisting upon that, and having directly sworn, that they would do them no Harm, they were obliged to keep their Word, which they had confirmed with an Oath; and so much the more, because, it engaged them to do nothing contrary to their Law, as he proves by the same Reasons that Grotius had used. To this Action of the Israelites we may apply a Sentence of Publius Syrus, which shews, that, we do well to keep our Word, tho' we have committed a Fault in giving it. "Etiam in peccato, recte præstaturs fides. v. 192. (Puff. L. 4. c. 2.)

base and servile Offices, by which they might, in some Sort, punish them for their Fraud at present, restrain them within the Bounds of their Duty, and prevent their being able to do any Prejudice to the People of Israel, for the future. Concerning this Fact, (k) St. Ambrose speaks thus, "*Joshua did not think, that the Peace which he had granted ought to be revoked, because confirmed by the religious Tye of an Oath, lest, while he reprov'd others for their Perfidiousness, he should be found to break his own Faith:*" From which single Example it is sufficiently evident, that, an Oath obtained by Fraud, is obligatory and binding. And, lest any one should imagine, that, Joshua and his Princes were more superstitious than they ought to be in this Matter, they not only withstood the People who thought the Gibeonites might be slain notwithstanding the Oath, by giving them this Reason for their Proceeding, (l) "*We have sworn unto them by the Lord God of Israel, now, therefore, we may not touch them;*" but also, even God himself approved of this Matter afterwards by two Signs; the one of which was, by granting Joshua a remarkable (m) Victory, even at the Expence of an illustrious Miracle, while he was fighting for the Gibeonites against the Kings that had conspired to destroy them; and the other, when after the Space of an

(k) Lib. 1. de Offic. 18.

(l) Jos. ix. 19.

(m) Jos. x. 8. 13.

hundred Years and upwards, *King Saul* was, for the unjust Violation of the *League* entered into with the *Gibeonites*, (n) punished by *three Years* public Famine, which could at last be expiated *only* by hanging up *publicly* seven of his Sons, pursuant to the *express* Command of God himself.

13. Yet, there is *some* Distinction to be admitted in *this* Case. For, the *Error*, into which a Man is led by the *Deceit* of another to whom he has sworn; provided, it be about some *Circumstance only*, or relates *only* to the *Cause* of the Thing in *some* Sort *extrinsecal*, or, as it were, *accidental*, does *not* take away the *Obligation*; as appears *clearly* from the *Error* of the *Israelites* with Regard to the *Gibeonites* just mentioned. The *same* must, likewise, be affirmed, in Case *Caius* should swear, that, he would marry the Widow of *Titius*, imagining her to be *Rich*, when in *reality* she is *Poor*. He would be *obliged* to marry her; nor, would *such* *Error* take away the *Obligation* of his *Oath*: And, the *same* must be said concerning *all other* Oaths of the *like* Nature. But, in Case the *Error* should be about the *Substance* of the Thing *itself*, or, it's *proper* and *peculiar* Cause; as, if *Caius* should swear, that, he would marry a *particular* Woman called, "*Titia*, imagining her to be "*Titia*, who in *Reality* is *not*, and should afterwards

(n) 2 Sam. xxi. 1.

discover his *Error*; He would *not* be bound by *such* an Oath. For, an *Error* about the *Substance* of the *Thing*, that was the *proper* and *peculiar Cause* of *swearing*, makes *void* the *Promise*, and *cancels* the *Obligation*.

14. The *sixth* and *last* *Doubt*, is, concerning *Force*; or, concerning an *Oath* extorted by *Fear* against the *Will* of the *Swearer*, in *such* *Manner* as that, if He were *not* awed by *such* *Fear*, he would *not* have sworn. And *this*, indeed, is a *difficult* and *intricate* *Question*: However, I will endeavour to dispatch the *Sum* of

the *Matter* with as much The TWENTY-NINTH CASE.

Brevity and *Perspicuity* as I am able. The *first* *Case*, therefore, is, where the *Fear* is *slight*, and *such* as cannot easily affect a *Man* of *Constancy* and *Fortitude*; as, if a *Person*, through *Fear* of unjust *Censure*; or, of *Derision*; or, of the *Anger*, or *Displeasure* of some *great* and *powerful* *Personage*, should promise by *Oath* to do *Something* that would prove *inconvenient* to him, and which, had he *not* been *awed* by *such* *Fear*, he would *neither* promise, nor perform. Now, in answer to *this*, I must again repeat *that*, in the *first* *Place*, which, throughout this *whole* *Treatise* of *Oaths*, must be *religiously* observed, namely, that, should *any* *Thing* be proposed to be *sworn* which is *contrary* to the *Law* of *God*; *contrary* to the *Duty* of a *Christian*; *contrary* to *good* *Morals*; *contrary* to the *Laws* of the *State*;

M

contrary

contrary to an *antecedent Obligation*; or, in *any other Respect* whatsoever, *unlawful*; such Oath ought *not*, upon *any View of Advantage*, or through *Fear of Danger*, to be *taken*; or, if *taken*, ought *not* to be fulfilled. This being supposed and granted, I affirm, that, a Man of *Fortitude*, (that is, a *pious Man*; For, *he* cannot be a Man of *Piety* that is *not* a Man of *Fortitude*), ought *simply* to *contemn* and *despise* all *vain* and *slight Fear*, and, with *Constancy* and *Intrepidity*, to *refuse* every Oath proceeding from it. For, (o) *The righteous Man is as bold as a Lion*. But, if *any one* be destitute of *this Fortitude*, it can scarcely come to pass, that he can perform *any glorious Exploit* and *worthy of a good Man*. For, (p) *He that observeth the Wind, says Solomon, shall not sow, and he that regardeth the Clouds shall not reap*. Nay, it can *scarcely* happen, but that he must, indeed, do *many Things* that are *unworthy of a good Man*. For, (q) “*The Fear of Man, as the same Solomon testifies, bringeth a Snare.*” But, should a Man, through *narrowness of Mind*, or *want of Courage and Resolution*, *unwarily* suffer himself to be caught in *such a Snare*, “*He has bound his Soul with a Bond, and is obliged to fulfill what he has promised.*”

13. The *second Case* is, where
 The THIRTIETH CASE. the *Fear* is *Great* and *Just*, and
such as may even affect and seize a

(o) Prov. xxviii. 1.

(p) Eccl. xi. 4.

(q) Prov. xxix. 25.

Man

Man of *Constancy* and *Fortitude*; such as, the *Fear* of *Captivity*; of the *total Loss* of *Goods*; of *Infamy*; of *Torture*; and, which is the *most* dreadful of *all*, of *Death itself*. Now, in Answer to *this*, I affirm, *first*, as *before*, that, if the *Oath* contains *any* Thing *unlawful* therein, it ought *not* to be taken by an *honest* Man; no; *not* to escape even *Death itself*; and if *taken*, that, it *cannot* be performed without *Sin*. Hear, O ye Christians, the *golden* Opinion of a *Heathen* Writer in *this* Matter,

The Man, in conscious Virtue bold, (r)
Who dares his secret Purpose hold,
Unshaken, hears the Crowd's tumultuous Cries
And the stern Tyrant's Brow, in Act to Rage,
defies.

Let the rough Winds, who rule the Seas,
Their wild, tempestuous Horrors, raise;
Let *Jove's* dread Arm with Thunders rend the
Spheres,
Beneath the Crush of Worlds, undaunted he
appears.

FRANCIS.

Secondly, I affirm, that, should a *Thing* be required with *menacing Force*, or *grievous Fear*, which is neither *unlawful* in *itself*, nor *injurious* to any *other* Person; but, is only *more* or *less*

(r) Hora. L. 3. Od. 3.

incommodious or disadvantageous to the *Person himself* that *swears*; as, if a *Man*, upon his *Journey*, should happen to meet with (4) *Robbers*, who, with *drawn Swords*, should *threaten* to *kill* him,

(4) It must be owned, several *learned Writers* think differently from the *Bishop* on this Point. *Puffendorf* puts the Question, What are we to think of *Oaths* extorted by *unjust Fear*? Surely, the *Person* who, by Means of *this Fear*, procured a *Promise* upon *Oath*, is no less obliged to *release* the *Promise* thus violently obtained, than if *no Oath* had been added to confirm it. Therefore, there appears *no Reason*, why *Compensation* should not be admitted in *this Case*, in Opposition to the Claim of the *injurious Party*.——Indeed, 'tis the Opinion of *Grotius*, that, “ *If either the Words of the Oath do not respect the Man, by conferring any Right upon him; or, if they do respect him, yet so, as that somewhat may be opposed to his Claim; then, the Effect of the Oath shall be this; That, the Man shall obtain no Right, but, that the Swearer shall, nevertheless, stand to his Oath, by Virtue of the Obligation to Almighty God.*” And, he urgeth, as an Instance, the Case of *One*, who, by some *unlawful Fright* or *Terror*, hath forced a *Promise* from *another*. But, if we truly settle *this Point*, we ought to *distinguish* between the *different Kinds* and *Natures of Oaths*. First, as to those Words, which are directed *not to Man*, but to *God*; as, if I say either alone, or before *Witnesses*, *I swear to God, that I will give Seius thus, or thus*. Here, the *Oath* hath the Nature of a *Vow*, by which I promise to *God*, that, I will perform somewhat in respect to his *Honour*; and consequently, by which I intended to transfer a *Right* on *God*, and not on *Man*. The Case is quite otherwise in *Oaths* which are directed to *Men*; or, in which I promise a *Man* somewhat, calling *God* to witness. For, here the *Obligation* seems altogether to *expire*, if it appear, that, the *Person* to whom the *Promise* was made lay under some *Fault* which rendered him *incapable* of receiving it. Thus, in a *Promise* to a *Thief*, I neither directed the *Engagement* towards *God*, nor expressed myself thus, “ *That I would, in regard to the Honour and Glory of the Divine Name, pay the Man what was mentioned.*” And, though we should grant never so *freely* and *absolutely*, that, even *such an Oath* hath likewise the *Force of a Vow*: Yet, since a *Vow* binds not, unless it be accepted by *God*, how shall I be sure,

him, unless he would *promise, upon Oath*, to ransom his Life with a certain Sum of Money; in this Case, I say, it is lawful to promise the Money, and to confirm such Promise by an Oath.
The

sure, that 'tis consistent with the *Divine Pleasure and Approbation*, that I, an *innocent Person*, should rob myself of my Goods, to bestow them on an *ungodly Villain*, only to put him into a Way of making some Gain of his *Wickedness*? And then, there is no Fear, that my Neglect of my Oath should lessen the Awe and Reverence of God in such a Wretch, who, by his *very Profession*, and Way of Living, shews, how little he values God and Religion. Yet, if there be any Man who, in this Case, to avoid giving Scandal to the *Weak*, and, that he may not seem, now he hath escaped the Danger, to treat the *Divine Name* in a *slighting or irreverent Manner*, which before was the Cause of his Deliverance; if any Man, we say, on these Considerations, is resolved to part with the Sum thus promised; it seems not only to be more safe and expedient, but likewise more acceptable to God, that, he should rather convert it to pious Uses, than to the maintaining the Wretch in his villainous Courses. And, this Method of Proceeding is the more justifiable and secure in Governments, where all Oaths of this Kind are by the *Municipal Laws* declared void. This, says *Barbeyrac* in his Note on this Passage of *Puffendorf*, is thus decided by a Constitution of the Emperor *Frederick II.* inserted in the Code, L. 2. Tit. 28. "*Si adversus Venditionem, Leg. 1. per vim autem, vel per Justum metum,*" that is, not by a just Fear, but by such a Fear as is sufficient to move a Person not very timorous: *Extorta etiam à majoribus (sacramenta) (maximè ne querimoniam malefactorum Commissorum faciant) nullius momenti esse jubemus.* The Poet *Gunther* also makes mention of a like Constitution of the Emperor *Barbarossa* in his *Ligurinus*, v. 793, &c.

- " Juramenta metu, mortisque dolore coacta,
- " Præcipue, ne quis multis nocitura Loquendo,
- " Publicet, aut in se crudeliter acta queratur,
- " Nullius Meriti, vel ponderis esse, Jubemus.

*Oaths took by Force, or Fear of threatened Fate,
And chiefly Those forbidding to relate
Designs of Public Harm, or to complain
Of cruel Wrongs, are here revoke, as Vain.*

The Reason, is, because, of *Two* Evils proposed, a Man *may*, and a *wise* Man *ought*, always to chuse the *Lesser*; and certainly, the *Loss* of the *Money* is a *less* Evil than the *Loss* of *Life*.
Thirdly,

The *Examples*, continues *Puffendorf*, alledged by *Grotius* to the *Contrary*, will, to those who rightly consider Things, appear *not* at all to *reach* the Purpose. 'Tis strange, that, *Matthæus* the *Civilian* should in his Discourse on *this* Point, commend the Act of *Julius Cæsar*, "Who being taken by *Pirates*, and made *swear* to pay *his Ransom*, sent the *Money*; but, afterwards putting to *Sea*, took *them*, and brought them to *Execution*." For, *Plutarch*, *Vel'eius*, *Suetonius*, and *Polyænus*, who all tell the Story, do none of them mention a Word about any such Oath: And, *Matthæus* seems in *this* to follow the Notion of those who fancy, that, a Person thus compelled to *swear*, may satisfy his Oath by paying, just for the *present*, what he promised; yet so, as that it shall be *lawful* for him immediately *after* to recover what he gave, either by his *own* Strength, or by calling in the Assistance of the *Magistrate*. Which is, indeed, but a *vain* Piece of Superstition; it being the *same* Thing, *not* to pay, and *immediately* to take *back* what we paid. *Tully* asserts, that, it is *no* Fraud to with-hold from a *Robber* a Ransom promised him for *saving* our Life, for *this* Reason; "Be-
 " cause, a *Robber* is a common Enemy, to whom no Faith can be en-
 " gaged; with whom no Covenant can be transacted." For which he is censured by *Grotius*, (as well as by *Sanderfon*), who observes, that, although a *Robber* hath *no* Title to those common Rights which the *Law of Nations* hath established between *Enemies*, in a *fair* and *open* War; yet, he ought to be admitted to *Fellowship* and *Communion* so far as the *Law of Nature* extends; one Precept of which it is, that, *Covenants* be *faithfully* observed. And yet, says *Puffendorf*, there are *not* wanting Arguments, which might be urged in *Tully's* Defence: As, that, since a *Robber* is a common Foe to all Men; or, *such* a one as, without any precedent Injury or Provocation, spoils and murders all that fall into his Hands, and consequently, makes it his *very* Profession to break and disturb that Society which God hath ordained amongst Men; therefore, he ought to receive *no* Benefit from any such common Bond, (as Oaths are), invented by Men to knit themselves more firmly together, after the *Divine* Appointment hath made them *sociable* Creatures. And, that a *Way of Life* which declares for *Atheism*, ought *not* to be admitted to any
 Gain,

Thirdly, I affirm, that, *such Oath is Obligatory*; and that, the *Ransom promised the Robbers by Agreement* ought *undoubtedly* to be paid. An Assertion *this*, which, though it may seem evident enough

Gain or Advantage from Religion. As, on the other Side, the Oaths and Protestations of *such Villains* are little regarded or relied on by *wise Men*. And, we find the *Pander* in *Terence* reckoning it amongst the necessary Accomplishments of his Art, "To have the Knack of Perjury." *Nic. Machiavel* says, (L. 3. Hist. Flor.) "When Religion and the Fear of God are once extinct, the Consequence is, that, Men regard and observe their Oaths, only so far as suits with their Advantage; using them not with an Intention of Performance, but as Means and Instruments of deceiving with greater Ease; and thinking themselves to have won the more Praise and Glory, the less Trouble, and the greater Security they have met with, in bringing about their knavish Designs."

The judicious *Barbeyrac* observes, that, *Mr. La Placette* (L. 2. c. 21.), takes the Words of *Puffendorf* here in a wrong Sense. These are his Words. "He makes *Cicero* say, "That, there is a Fraud in keeping these Sorts of Promises." Whereas, these are *Mr. Puffendorf's* Words, "*Cicero quoque, Prædoni pactum pro capite pretium, sine fraude non asserri asserit*:" Where the whole Connexion of the Discourse shews, that, there is no Appearance of any such Imputation to *Cicero* by *Puffendorf*, but that he fairly relates the Opinion of that famous Orator; for, he says not, "*non sine fraude asserri, sed sine fraude non asserri*," which is very different, and comes up exactly to the Sense of *Cicero's* Words, which are, "*Si Prædonibus pactum pro capite pretium non attuleris, nulla fraus est, ne si juratus quidem id non feceris, &c.*" *Mr. La Placette*, after he has made this Mistake, infers from it what *Puffendorf* never did, and, of which none ought to suppose him Guilty without very great Reason, supposing, that, through Carelessness it had been ill expressed, as it happens to him sometimes; he infers, I say, from thence, "That, *Mr. Puffendorf* seems to assert, that, a Traveller can't in Conscience, to save his Life, either promise Thieves the Sum that they demand of him, or pay it them; and that, 'tis an Offence against the Public to do either of them. So that, this Oath is sinful, and we ought not to make it; since no Man may lawfully oblige himself to that which he cannot do without a Sin. And so, upon such Occasions a good Man ought rather to suffer himself to be

enough from *what* has been already said; yet, since it is *opposed* by Men of *great Reputation*, and among those, by *Cicero*, (a Man of *singular Judgment*, and, who *generally* thought as justly as

killed, than *promise* a Shilling to such *Thieves* as offer to *spare* his *Life*, provided he'll *oblige* himself to do a Thing which is in his *Power*. I am of Opinion, that, *Thieves* trouble not *themselves*, whether, it be in their *Power* or no to perform the *Promise* which they had *extorted*, with, or without an *Oath*. In fine, there is *not* the *least* Thing in *Puffendorf*, which can give ground to suspect *any such* Notion as he attributes to him; nor, can it be inferred from his *Principles*, but by supposing *the Thing in Question*. He affirms, that, a Man is *not* bound to keep a *forced Oath*; but, he elsewhere leaves him at *Liberty* to *observe* it, or *not*, as he sees fit; and so, makes it a *Matter of Prudence*: And, though he believes, he cannot keep it *without* offending against the *Public*; yet, it follows *not*, that, he may *never* do it; because, he supposes, (to speak *properly*), *that*, it is no *true Oath*; and, as he makes *no* Engagement with the *Thief*, who had *no Right* to *require*, or *accept* it; so, he called *not* God to *witness*; and so, 'tis past all Contradiction, that, he *only* swore with his Mouth. Mr. *La Placette*, after these *weak Reasonings*, concludes, nevertheless, with *this* sharp Censure, "See, how the *Liberties*, which the *Enemies* of severe *Morality* propound, do usually End. They carry the *Severity* and *Rigour* much farther, than they do, when they accuse of casting good Souls into Despair." But, I will refer it to *any* judicious Man to examine, whose *Books* have done *more* Harm and *less* Good; whether, *those* who are of *Puffendorf's* Judgment; or those *Moral Divines*, who are full of *Mysteries*, *scholastic Notions*, and *metaphysical Impulses* to the *highest* Degree, as well as of *impracticable Maxims*. Mr. *La Placette* affirms also, that, to maintain, that a *forced Oath* doth *not* oblige, is, to do *great Mischief* to *Society*, by making *Pirates* and *Banditti* desperate, and hinder them from coming to *any* Treaty. But, he may assure himself, that, *they* will neither read *Puffendorf's*, nor his *own* Works. They depend *more* upon the *Fear*, which *such* Men have of falling into their Hands again, than upon the *Obligation* which lies upon them *indispensably* to keep their *Word*, or *Oath*. L. 4. c. 2. (See *Mucieu's Comment* on *Grotius*; Tom. 2. p. 487.)

In *another* Place, *Puffendorf* considers the Point of *Fear*, and shews, what *Power* it has, (but without an *Oath*) in rendering *bu-*
man

as it was possible for a *Heathen* in *all other Points*, except in *this alone* concerning the *religious Tye* of an *Oath*), it will not be foreign to our Purpose to confirm it by *some Reasons*. In the *first Place*,

man Acts incapable of producing an *Obligation*. As to that Species of *Fear*, which denotes a *vehement Terror* of the *Mind*, caused by the *Threatening* of some *grievous Mischief*, unless we engage in the *Promise* or *Pact* desired, he says, "That, in stating *this Point* it is necessary, that, we furnish ourselves with some *clear and fundamental Principles*.—And, *such is this undoubted and original Truth*, "That, *our Will naturally inclines to what it looks upon, as Good*." Now, it appears no *less* good and desirable to the *Will*, to avoid an *imminent Evil*, than to acquire an *absent Benefit*; and, towards the Attainment of *both* these Ends, we employ the *most likely Means*, although they be *such* as we should not barely, on their Account, chuse or embrace. For, we commonly make use of Methods in themselves ungrateful and troublesome for the escaping of a *Danger*, as for the acquiring of a *Pleasure*. Though, indeed, the Hopes of compassing a *Good* does more sweeten the Griveousness of *these Means* or *Methods*, than the Care of preventing an Evil. For *which Reason*, *Aristotle* calls those only *mixt*, (that is, partly *voluntary*, partly *involuntary*) *Actions*, which are undertaken for the Sake of declining *some Mischief*, which we are *like* to suffer; as, in that *trite Instance* of throwing Goods over-board in a Storm: Though, as great Hardships as any of *this Kind*, are undergone by the *Wrestlers*, and other *Engagers* in the *public Games*, to prepare their Bodies for *those Exercises*. What we would observe, *then*, is *this*, that, altho' *Actions* performed upon *Fear* of a *greater Evil* ought to be accounted *spontaneous*; and, though the *lesser Evil* which in those Cases we chuse, is, as Things *then* stand, the *real Object* of our Desire; yet, *all this is not sufficient* to found an *Obligation* in us towards *another*. For, since *every Obligation* is directed towards some *other Party*, to whom it is to be made *good*, and who thereby obtains a *correspondent Right* of compelling us to *Performance*; to produce *such* an Engagement, 'tis not enough, that, *one Person* has in him the *due Grounds* or *Principles* of an *Obligation*, but, it is requisite, that there be in *some other Person*, *Principles fit* to create a *Right*. For, we can have no *Notion* of an *Obligation*, unless a *Right* answer to it, or be consequent upon it. As, I can owe nothing, if there be *no Person* who can *rightly demand any thing* from me. Therefore, *such Fear alone*

Place, then, Whosoever swears a Thing lawful and possible, is bound to perform it. But, to pay a Robber Money promised him by Agreement, is neither unlawful, nor impossible; and therefore, he

alone invalidates and destroys an Obligation, as is caused by some Vice or Imperfection in the other Party, rendering him incapable of acquiring a Right. And, such a Defect is every injurious Action, which cannot be said to produce a Right, without a manifest Contradiction. For, to pay what another has a Right to demand, is a Precept of the Law of Nature; and, should an Injury, (that is, a Deed or Fact directly contrary to that Law), be able to cause any such Effect; the Law of Nature would lend Strength and Assistance to its Enemy, and manifestly contribute to its own Destruction. We may as well say, that, a Law which forbids Thieves, may at the same Time reckon their Trade and Practice amongst the honest Ways of Gain. From whence he concludes, "those Promises or Pacts to be invalid, which a Man is compelled to engage in, by the unjust Force of the Party, to whom they are made. Upon this the judicious Barbeyrac observes, as follows—" To clear this Matter, it is necessary to make some Reflections. First, The Reason, which Puffendorf alledges, taken from the Incapacity made by the Cause of Fear, to acquire any Right from the other Character, is very good; but, there is another, drawn from the Person in whom the Fear is, that, his Consent is not so free as is required in all Promises and Agreements, which ought to be perfectly voluntary. 'Tis not here as it is in Actions criminal and evil in themselves, which ought not to be committed for fear of the greatest Menaces, tho' the Force yielded to, may lessen the Crime. Because, as we ought and may obey the Law that forbids them, we are thought to be free so far as is necessary to make us culpable, tho' we have nothing in view but the Trouble, which we are immediately threatened with. But, in the Matter of Promises and Agreements, all that is not done without Artifice and Constraint from him with whom we engage, is looked upon with Reason not to have a good Ground of Consent, and consequently, is void in itself; because, we act about Things indifferent, which we need not determine farther than we see convenient. The Law, that leaves us at Liberty to do them, or not, lays no Necessity upon us to keep what we are engaged to, contrary to our Will and Interest. Reason and Prudence will oblige us, rather to depart from our Rights, than expose ourselves to the

he is bound to perform it. Secondly, He made choice of *what* at *that* Juncture appeared better for him; and which, in case one of the two were now again to be necessarily chosen by him, he would

the ill Effect of Force; but, if there be no Damage to us, nothing can oblige us to make good an Act which is null in itself, unless we fear a worse Consequence than appears in doing it. Mr. Domat, who has used, (in his *Civil Laws* reduced to a natural Order, Part I. L. 1. Tit. 18. S. 2.) this Reason to shew the Nullity of forced Engagements, but explains them obscurely, has not forgot the other Reason, taken from him who is constrained to promise or treat. Secondly, Puffendorf seems to think, that, the Evil, which, being apprehended, is sufficient to make forced Promises and Agreements void, ought to be very terrible, whose Prospect may affright the most courageous Persons. 'Tis certainly the Opinion of the Roman Lawyers, who confine this Fear to the Danger of losing Life, or suffering some violent bodily Pain.—But, supposing always, that the Fear is unjust, I do not see, why the Apprehension of a small Evil is not sufficient to make Promises and Agreements void, if that be the principal Motive, and without it Consent had not been given. The least Injustice, in my Opinion, gives no more Right to the Author of it, than the greatest. But, the Fear must not be a vain one. For, he that resigns himself up to Panic Fears, must blame himself—(*Vani timoris non est justa Excusatio*, Digest. L. 50. Tit. 17.) otherwise, as Mr. Domat observes, all the World would not have the same Resolution to resist Force and Menaces. There are some Men so very weak and timorous, that, they yield to the least Impressions; so that, the least Force prevails as much on them, as the greatest on the most Courageous; and, 'tis principally for their Sake, that the Laws punish Matters of Fact and Oppressions. But, if the same Laws do not allow the Fear of a small Evil to be ranked among the Causes of nulling a Contract, it proceeds from hence, according to the judicious Reflection of Mr. Placcette, in his *Treatise of Restitution*, that, the Lawgivers would prevent the Multiplication of Suits, which are, without Contradiction, a great Evil; but, they have left, adds he, the Rights of Conscience entire, and their Authority hinders not, but that we may observe exactly what that inward Law prescribes upon that and the like Subjects. We must then, conclude, (says Barbeyrac) “ That, by natural Right all Force, and every Kind of Violence, direct or indirect, all Menaces, and in general, all unlawful Influences which oblige Men, “ contrary

would chuse again; and, it seems, that, the *Performance* of what was *prudently* chosen, cannot with *Honesty* be refused. *Thirdly*, That which is *promised* for a certain *End*, ought to be *performed* by the Person that promises it, *so soon* as he

“contrary to their *Inclination*, to give their *Consent*, which, *otherwise*, they would not, takes away that *Liberty* which is necessary to make an *Engagement* valid, and consequently, renders all Promises and Agreements in such Cases null and void.” I shall farther add, only one Passage in *Plato*, wherein that *Philosopher* asserts, “That, the Agreements, to which a Man is obliged by an unjust Force, ought to be valid no more than those, which are contrary to the *Laws*; or, are not in our Power to execute, by reason of some unforeseen Accidents. (*De Leg. L. 14. Tom. 2.*)

Mr. *Hobbes* asserts, “That, Covenants entered into by Fear, are not therefore invalid, because, they proceed from Fear; for, then, it would follow, that those Covenants, by which Men unite in Civil Life, and make *Laws*, must be invalid; for, the Fear of mutual Slaughter is the Cause of one Man’s submitting himself to the Government of another. It would follow, likewise, that, a Man acts irrationally, who believes his *Captive*, bargaining with him for his *Ransom*.” To this *Puffendorf* answers. In the first of these Reasons there is a plain Ambiguity in the Term, “Fear. For, that Fear which engages Men to enter into Civil Societies, is of a quite different Kind from that which we are now considering. The former is a Caution against some Evil which may happen indefinitely; I know not when, nor which Way. The latter is a dreadful Apprehension of a grievous Evil, just now coming upon me, and which I am not able to resist. Therefore, the Covenants which we make for the Procurement of mutual Assistance against a common Enemy, are entirely of another Nature from those by which we promise some Reward to free ourselves from a Danger, which a Villain unjustly brings upon us. As to the latter Reason, we readily acknowledge, that a Rogue acts very irrationally, when having first extorted a Promise by Force, he afterwards yields Credit to the Person, as if the whole Business had been honestly and fairly transacted. For, that, Wickedness and Folly should meet together, is no Contradiction. On the other Side, we may venture to say, that, he would not act very rationally, who being got safe from a Mischief, with which he was unjustly threatened, should freely pay the Russian the Price of his Villainy: And therefore, says *Dionysius Halicar*: (*L. 8.*) “Whatever is extorted
“from

He has obtained *such End*; because, every Thing that is *promised* upon a *Condition*, ought to be *fulfilled* as soon as the *Condition* is *performed*: And, upon *this Bottom* it is, that, the *Obligation* of

“ from *private Men*, or from *public States*, by *Force* and *Necessity*, holds no longer than the *Necessity* itself continues.

Mr. Hobbes adds, “ ’Tis universally true, that, *Pacts oblige, whenso-*
“ ever a *Good* is received, and when the *Act* of promising, and the *Thing*
“ promised, are both lawful. But, it is lawful for me, both to make a
“ *Promise* for the rescuing of my *Life*, and also to give what I will of
“ my own, even to a *Robber*.” But, indeed, says *Puffendorf*, what the
Robber in this Case performs for the Traveller, in forbearing to take
away his *Life unjustly*, cannot be called, “ a *Good*. The abstaining
from an *Injury*, ought not to pass for a “ *Benefit*. And, we are then
only said to have done *some Good* to a Man, when we have con-
ferred *some Advantage* on him which he wanted, or secured and pre-
served some which he before enjoyed; or, have delivered him from
some *Evil* or *Danger*, which fell upon him without our *Fault*. And
therefore, says *Barbeyrac*, it was a foolish Excuse alledged by *Poly-*
crates in *Herodotus*, (L. 3.) when he pillaged his Friends and Ene-
mies without *Distinction*; that, to restore to his Friends what he took
from them, would be a greater *Obligation*, than if he had altogether
forborn the *Injury*. As to the latter Part of the Agreement,
it is no good Consequence to say, “ It is lawful for me to *promise*,
“ and to pay the Villain; therefore, he has a *Right* of requiring
“ the *Performance* from me; or therefore, I stand bound towards
“ him by some inward Tye upon my *Conscience*.” We may do many
Things lawfully, which we cannot be engaged to do by any *Obliga-*
tion. I may lawfully throw away my Goods; but, does it, there-
fore, follow, that, another can oblige me to such an Extravagance.
So that, the *Rule*, which the same Author lays down on this Sub-
ject in his *Leviathan* (c. 14.) is likewise false; “ *Whatsoever I may*
“ lawfully do without *Obligation*, the same I may lawfully covenant to
“ do through fear; and, what I lawfully covenant, I cannot lawfully
“ break.” For, he ought to have added this Condition, “ Pro-
“ vided, the other Party can honestly demand it of me.” (*Puffen-*
dorf's Law of Nature and Nations, B. 3. C. 6.)

And, to add no more, the learned *Burlamaqui*, speaking of the
Right of Sovereignty acquired over the Conquered, says, “ If he
“ who has constrained another, by the Superiority of his Arms,
“ to submit to his Sway, has undertaken a *War* manifestly unjust;
“ or

of *conditional Vows* is principally founded. But, He who, by *Agreement*, promised a *Robber Money*, did so to the *End* that he may thereby *ransom* or *save* his own *Life*, and therefore, having in *preserving* his *Life*; obtained the *End* which he intended, he ought to pay what he promised. Fourthly, the *Wisdom of the Flesh* ought always to be suspected and guarded against, as being an *Enemy to Purity of Heart*, and a dangerous *Snare to the Peace of Conscience*: But, what is the *Wisdom of the Flesh*, unless it be, where *Honesty* seems to stand in *Competition with Profit*, to reject that which is *honest*, and embrace that which is *profitable*? That Man can scarcely deliberate much about *paying* the *Money* which he promised by *Agreement*, who prefers *Religion* and *Faithfulness* to *Riches*; and, is of Opinion, that, *temporal Advantage* ought to be postponed to *Tranquility of Mind*. Fifthly, and Lastly, *Regulus* and others, (as I before observed), were greatly commended by the *Heathens*; because, they preserved *Faith* with *Enemies*, though promised them upon very *iniquitous Conditions*. (5).

Nay,

“ or, if the Pretext on which it is founded, is visibly *frivolous* in the Judgment of every reasonable Person, I confess, that a *Sovereignty*, acquired in these Circumstances, would to me appear visibly *unjust*; and, I see no Reason, why the *vanquished People* should be more obliged to keep such a Treaty, than a *Man*, who had fallen into the Hands of *Robbers*, would be obliged to pay, at their Demand, the *Money* he had promised them for the *Ransom of his Life and Liberty*. (Principles of Politic Law.)

(5) *M. Pomponius*, a Tribune of the People, once entered an Action against *L. Manlius*, the Son of *Aulus*, who had been *Dictator*.

nay, *Pomponius the Tribune* is commended even by *Cicero himself* for performing the Oath which he, through Fear, was compelled to swear; and that, with this additional *Epiphonema*, "So powerful in those Times was the Force of an Oath!"

16. But, Those, who are of the contrary Opinion, object, and say, in the first Place, that, an *Enemy* is not to be considered in the same Light with a *Robber*, or, a *Pirate*: For, since an *Enemy*, as well as a *Person at Law* with us, ought to be dealt with according to Law; (the Former, according to the Law of Nations; and, the Latter, according to the Civil Law;) it follows, that, Faith ought to be kept with him: But, with a

tor, for his holding that Office somewhat longer than he should have done. And, amongst other Things, brought in this too against him, "That, he kept his Son *Titus*, who was afterwards *Torquatus*, from Conversation with the World, and had strictly charged him to live solitary in the Country." As soon as the Son heard his Father was in Trouble about this Business, he is reported immediately to have set out for *Rome*, and to have come early in the Morning to *Pomponius's* House. *Pomponius* was no sooner told of his coming, but he got up immediately; and, thinking, the Youth, out of Anger, had brought some Complaint against his Father, commanded all others to depart the Room, and him alone to be brought in to him. As soon as the young Man was got into the Room, he drew his Sword, and swore he would immediately kill *Pomponius*, unless he would promise him upon Oath to meddle with his Father no further. *Pomponius*, out of sudden Apprehension of the Danger, did swear to him accordingly, and discharged his Father from any more Trouble; having first reported the Matter to the People, and told them, why he was forced to let fall his Action. Thus strict and conscientious were People in those Times in observing their Oaths! Tully's Off. L. 3. c. 31.

Robber,

Robber, who is, as it were, a *common Enemy* to *Mankind*, we ought to have *no legal Fellowship* nor *Society*; and, consequently, *no Faith* ought to be kept with him. To this I Answer, *first*, that, *skilful Lawyers* affirm, that, we may have some *legal Fellowship* or *Society* even with an *Enemy*, as being one, of whom if we should borrow Money, we ought, according to the *Law of Nations*, to restore it to him again; and, therefore, that, by *parity of Reason*, a *Promise* made to a *Robber* ought to be performed. Secondly, though nothing should be due to a *Robber*, as being an *unworthy Person*; for which Reason, the Performance of a bare *Promise* to him may, perhaps, be the more excusably avoided; yet, I affirm, that, our *Faith* ought to be kept, at least, with *Regard to God*. In the second Place, They object, that, by such *Contracts* an *honest Citizen* may be plundered, which turns to the *Detriment* of the *Public*. I answer, No, but, the *Life* of an *honest Citizen* may be thereby preserved, which may prove to the *Advantage* of the *Public*. But, say they, in the third Place, if *Robbers* may not only escape with *Impunity*, but also fare so well; then, *Robberies* and *Rapine* will be, by such Means, established. To this I answer, that, if that should so come to pass, it will happen by *Accident* only, through the *Fault* of the *Robbers*, and not through his *Fault*, who, in no Respect, lent them Assistance; nor, did even approve

prove of *what* they did by making *such* a Promise; nor, does he *still* approve thereof by his *keeping* it; but, it will be *rather* certain, that, by *providing* for his own *Safety*, he also obstructed their *Wickedness* in *such* Manner, as that he suffered them to be *Robbers only*, and not *Murderers* also. In the The THIRTY-FIRST CASE.
fourth Place, they object, that, the *Obligation* of an *Oath* arises from a *deliberate Act* of the *Judgment* and *Will*: Where, therefore, the *Will* is so far from *Freedom*, that, *what* flows from it may be *rather* called *Coaction* than *Action*, no *Obligation* seems (*s*) to follow. I answer, that, the *Will* cannot be *compelled*, which is a *Point* acknowledged by *all* Parties. There may, indeed, be a (*6*) *Compulsion* in Re-
spect

(*s*) *Nemo Jurejurando tenetur, quod per Necessitatem adactus est Sen. 1. Controvers. 6.*

(*6*) The *Denomination* of "*voluntary* or *human Actions* in *General* is given to *all* those that depend on the *Will*; and that of, "*Free*, to such as come within the *Jurisdiction* of *Liberty*, which the *Soul* can *suspend* or *turn* as it pleases. The opposite of *voluntary* is "*involuntary*"; and, the *contrary* of *Free* is "*necessary*, or whatever is done by *Force* or *Constraint*. All *human Actions* are *voluntary*, inasmuch as there are none but what proceed from *ourselves*, and, of *which* we are the *Authors*. But, if *Violence*, used by an *external Force*, which we are incapable to resist, hinders us from acting, or makes us act *without* the *Consent* of our *Will*; as, when a *Person* stronger than *ourselves* lays hold of our *Arm* to strike or wound another *Person*, the *Action* resulting from thence being *involuntary*, is not, properly speaking, *our Deed* or *Action*, but that of the *Agent* from *whom* we suffer *this Violence*.

The same cannot be said of *Actions* that are *forced* and *constrained*, only as we are determined to commit them, thro' *fear* of a great

spect of the *external* and *remote Principle* of *Action*; but, in Respect of the *more immediate Principle*, which in *all* human *Actions* is “*the Will*,” there can be *no Compulsion*. Therefore, He who takes

and *imminent* Evil with which we are menaced: As, for Instance, were an unjust and cruel Prince to oblige a *Judge* to condemn an innocent Person by menacing to put him to Death if he did not obey his Orders. *Actions* of *this* Sort, tho’ forced in *some* Sense, because, we commit them with *Reluctancy*, and would never consent to them, were it not for a *very pressing Necessity*; such *Actions*, I say, are ranked, nevertheless, among the Number of *voluntary Actions*; because, after all, they were produced by a *Deliberation* of the *Will*, which chuses between *two* inevitable Evils, and determines to prefer the *least* to the *greatest*. This will become *more* intelligible by a few Examples. A Person gives Alms to a poor Man, who exposes his Wants and Misery to him; *this Action* is at the *same* Time both *voluntary* and *free*. But, suppose a Man, that travels alone and disarmed, falls into the Hands of Robbers, and that, these Miscreants menace him with *instant* Death, unless he gives them all he has; the Surrender which *this* Traveller makes of his Money, in order to *save* his Life, is, indeed a *voluntary* Action, but *constrained* at the *same* Time, and *void* of *Liberty*. For *which* Reason, there are *some* that distinguish these *Actions* by the Name of “*mixt*,” as partaking of the *voluntary* and *involuntary*. They are *voluntary*, by Reason the Principle that produces them is in the *Agent* itself, and the *Will* executes them *contrary* to it’s *Inclination*, which it would never do, could it find *any other* Expedient to clear itself of the *Dilemma*. Another *necessary* Elucidation is, that, we are to suppose, that, the *Evil* with which we are *menaced*, is *considerable* enough to make a *reasonable* Impression upon a *prudent* or *wise* Man, so far as to *intimidate* him; and besides, that the Person who compels us has *no* Right to *restrain* our *Liberty*; insomuch, that, we do not lie under an *Obligation* of bearing with *any* Hardship or Inconveniency, rather than displease him. Under these Circumstances, *Reason* would have us determine to suffer the *lesser* Evil, supposing, at least, that they are *both* inevitable. This Kind of *Constraint* lays us under what is called “*a moral Necessity*.” Whereas, when we are *absolutely* compelled to Act, without being able, in *any* Shape whatsoever, to *avoid* it; *this*, is termed “*a physical*”

takes an Oath to a Robber in order to save his own Life, does it, as it were, voluntarily; and yet, with an unwilling Mind: Such an Oath, therefore, is not simply involuntary, but mixed; and is by Aristotle called, "not spontaneous; that is, an Action, partly, involuntary, because, not done willingly or gladly; and partly, voluntary, because, done out of Choice, though not the freest; yet, so free, as to merit to be called rather voluntary than involuntary; because, the Agent, being allowed his Choice of two Things, has a Power to chuse which soever of them he had

physical Necessity. 'Tis, therefore, a necessary Point of philosophical Exactness to distinguish between voluntary and free. In Fact, 'tis easy to comprehend by what has been now said, that, all free Actions are indeed voluntary; but, all voluntary Actions are not free. Nevertheless the common and vulgar Way of speaking, frequently confounds those two Terms, of which we ought to take particular Notice, in order to avoid all Ambiguity. (Burlamaqui's Prin. of Nat. Law. B. I. c. 2.)

Puffendorf (in his *Whole Duty of Man*, according to the Law of Nature) speaking of the Imputation of human Actions, says, "Neither can those Things be imputable, which one acts or suffers by Compulsion. For, it is supposed, that, 'twas above his Power to decline or avoid such doing or suffering. But, we are said, after a twofold Manner, to be compelled; one Way is, when another that's stronger than us, violently forces our Members to do or endure somewhat. The other, when one more powerful shall threaten some grievous Mischief, (which he is immediately able to bring upon us), unless we will, as of our own Accord, apply ourselves to the doing of this, or abstain from doing that. For then, unless we are expressly obliged to take the Mischief to ourselves which was to be done to another, he that sets us under this Necessity, is to be reputed the Author of the Fact; and, the same is no more chargeable upon us, than a Murder is upon the Sword or Ax which was the Instrument. (B. I. c. 1.)

rather: “ *And, he who had rather, is willing
 “ or free to make Choice of one. He, therefore,
 cannot justly be said to have been compelled to
 swear, who, when it was in his Power not to
 have sworn, yet, had rather or chose to swear.
 For, being threatened with Death if he had not
 sworn, it was left to his Judgment and Choice,
 whether, he had rather suffer the threatened Evil,
 or, be freed from it by binding himself with an
 Oath. He deliberated, or considered of the Mat-
 ter, and chose to be obliged; and therefore, was
 willing to be bound: And, whosoever should
 own, that, he was willing to be bound, would
 afterwards very absurdly assert, that, (t) he was
 compelled to it, and therefore, not bound. In
 the fifth Place, they object, that, nothing is due
 to a Robber; and therefore, that, a Traveller
 cannot be bound by an Oath made to such; be-
 cause, it is allowed by all, as has been before
 observed, “ That, every Obligation bespeaks and
 implies some Relation or Reference to a Debt:
 Now, that, nothing can be due to a Robber is
 proved; because, no Right can be founded upon
 an Injury. And, it seems very unjust, that, any
 Man should acquire any Kind of Right by any
 injurious Act of his own: Therefore, no Right
 can accrue to a Robber, who, by terrifying the
 Traveller, extorted an unjust Oath from him,*

(t) ἡ μὲν εἰς τὸ ἐβλασφῆσαι φάσκουσιν ἰκανὸν εἶς παρὰ τὸν. Nazian.
 Ep. 219.

contrary to the *Duty* of a good Man; and, consequently, *He*, who took *such Oath*, is *not* obliged to perform it. To which I answer, that, there may a *twofold Obligation* arise from an *Oath*; one, with Respect to the *Man*, to whom the *Oath* is sworn, as to a *Party*; the other, with Respect to *God*, by whom the *Oath* is sworn as a *Witness*, and an *Avenger*. Now, there are many Things that may impede the former of these Obligations so, as that the *Man*, to whom the *Oath* is taken, can neither acquire any *Right*, nor claim any Thing as justly and fairly due to him from the Swearer, in the Court of Conscience: And, with Regard to this Kind of Obligation and Debt, the *Objection* stands Good. But, notwithstanding the Obligation may cease, with Respect to the *Man* who offers the *Injury* or *Violence*; yet, the Obligation, entered into with Regard to *God*, still remains; to whom not only great Irreverence would be offered, should a *Man* take the *Oath* without an *Intention* to perform it; but also, a great *Injury* be done him, if it should be taken; and yet, afterwards be slighted or disregarded.

17. One Case still remains, peculiar to this Place, and 'tis this; suppose, a *Man* should happen to meet with *Robbers*, and be compelled, for fear of being murdered, to promise them (7) Silence

(7) Puffendorf says, "It is requisite in order to the validity of an *Oath*, that, the Obligation be lawful, which it is added to

Silence upon *Oath*; that is, *never to reveal their Robberies to any one; nor, to discover their Names to the Magistrate.* “*In this Case, says Frederic Baldwin, late Professor at Wittenberg,*
It

confirm. Therefore, a *Promise*, tho’ sworn to, shall be of no Force or Effect, if the *Subject* of it were a *Matter*, either *repugnant* to the *natural* or *divine Law*, or to any *human Law*, (if the Party lives under *civil Government*), inconsistent with the *natural* and *divine*. The Example of *David* is most illustrious in *this Case*, who having, in his *Passion*, sworn to destroy the *House* and *Family* of *Nabal* for denying him a *reasonable Kindness* in abusive and slanderous *Language*; yet, being pacified by the *Intercession* of *Abigail*, he thanks *God*, that he had been *thus* hindered from a *more sinful Performance* of a *sinful Engagement*. And so, *Alboinus* was, no Doubt, in the *Right*, for *retracting* a *Vow* which he had made to cut off *all* the *Inhabitants* of *Pavia*, upon their refusing to surrender at his *Summons*. For, ’tis absurd to invoke the *divine Vengeance* upon any *Action*, but *such* as *God* himself hath, under a severe Sentence, forbidden. To do *otherwise*, would be to abuse the *Awe* and *Reverence* which we owe the *divine Majesty*, in making it, as it were, a *Means* of *affronting* him. And, the Design of introducing *Oaths* amongst Men, was, that, they might add *Strength* to *good Actions*, *not* that they might afford *Excuse* and *Protection* to *bad*. *Dionysius Halicarn.* (L. 11. p. 694.) says, “*The Gods would have us make use of Covenants for just and honest Designs, not for those that are vitious and unreasonable.*” The very *Alchoran* forbids Men to *swear unlawfully.*” as suppose, that they will never come near their *Wives*; and, enjoins any Person who hath happened to make *such an Oath*, to set a *Slave* at *Liberty* by Way of *Expiation*, before he presumes to *break* it. And, here tis made a *Question*, “*Whether a Man falling amongst Thieves,*” and being by them compelled to *swear*, that he will for ever “*keep Silence*, and, as far as in him lies, *provide* for their *Security*, “*be bound to stand to his Oath?*” To which we are inclined to Answer in the *negative*; in Case his *Silence* be likely to prove the *Occasion* of exposing many other Persons to *Danger*. For, as to his own Part, he might *lawfully* enough suffer the *Villains* to escape with *impunity*; but *not*, if *their Safety* was to be followed by the *Murder* and *Ruin* of many *innocent Men*. And, we might apply
to

"It is very difficult to come to any Determination; but adds, That, it seems safer to him, that, the Person do not keep Silence, but discover the Matter to a Magistrate, notwithstanding his Oath not to discover it. He, therefore, is of Opinion, that, such Oath is not obligatory, and assigns three Reasons for it; none of which appear satisfactory to me; at least, as they are proposed by him, briefly and nakedly, without any further Proof or Confirmation. In the first Place, he asserts, that, this Oath is taken con-

to a Person under these Circumstances the Saying of Ateius Capito to Tiberius in Tacitus. "*Sane lentus in suo dolore esset; reipublica injurias ne largiretur*; So far as he was concerned himself; or, in regard to his own particular Grievance, he might be as merciful as he pleased; but, he ought not to forgive the Injury done to the Commonwealth."

Upon the above Passage, namely, "That, it is requisite in order to the Validity of an Oath, that the Obligation be lawful, which it is added to confirm, Mr. Barbeyrac observes, "That, it is in this Sense, that we may allow the common Maxim to be true, "That, an Oath that ought not to be made, ought not to be kept." For, if the Thing to which we oblige ourselves be good or indifferent in itself, the Oath is valid and obligatory, whether we Sin or not in making it. Here are two Examples which will clear this Matter. A Man obliges himself by Oath never to swear all his Life, nevertheless, some Time after he swears; and, by this second Oath obliges himself to restore something he has borrowed. Doubtless, he Sins by making the second Oath, which he ought not to have done; but yet, he is bound to keep it. Another borrows, and swears he will restore what he has borrowed, having yet no Design to do it. He commits a horrible Sin by it; but, will any Man say, he is not obliged to perform his Oath? The Maxim by which he Acts is not true; but, in Respect to such Oaths by which he engages himself to do some wicked Action, or forbear some good one, which he ought to do. This is what Mr. La Placette says, L. 2. c. 5. of his Treatise of an Oath. (Puffend. L. 4. c. 2.)

cerning a *Thing unlawful*; and, indeed, if *this* were *true*, the *whole* Matter would be at End, and, there would be *no* need of any *further* Arguments. But, *this* is only taken by him for granted, without any Kind of Proof. Should *such Oath* be thought *unlawful* for *this* Reason, that, it is the Duty of a *good Citizen* to discover and implead Villains before the Magistrate in order to bring them to *condign* Punishment; *this*, indeed, must be granted him; but, it does *not* from *thence* follow, that, it is *always* a *Sin*, “ *not to discover, or implead them*; because, the *affirmative Precepts* of *Duties* do *not* bind us *simply* to the Performance of *such* Things, but, *as we are able, and find it expedient*, according to the *exigency* of *Circumstances*. Secondly, he says, that, *such Oath* seems to have *some Appearance* of *Collusion* with the *Robbers*. But, *this* is so *timorously* expressed by him as shews, that, he ought *not* to be esteemed to have put much confidence in *this* Argument; (For, he calls, it, “ *an Appearance* of *Collusion*; “ *some Appearance*; and, “ *it seems to have such Appearance*.) But, whether *this* be *true*, or *false*; who, in the *mean* Time, will take upon him to prove, that, it is *not lawful* for a *Traveller*, in Case he should happen to meet with *Robbers*, to do *somewhat*, when in *imminent Danger* of Life, which may seem to carry *some Appearance* of *Collusion* with them. As to what he asserts, in the *third Place*,
that

that, by *such Silence*, justice is obstructed; the wicked confirmed in their Impiety; and, that, others may, by *this Means*, be brought into *Peril* of their Lives, it would, indeed, be valid, had *such Traveller* escaped *safe*, and without taking any Oath at all, out of their Hands. But, we suppose, that, *he* would certainly have been *murdered*, if he had not taken *such Oath*. Now then, I demand, was it *lawful* for him, in *such certain Danger of Life*, to swear he would keep *Silence*, or not? If it was *not lawful*, (and surely the two first Arguments prove *this*, or they prove *nothing*); Then certainly, he must have *perished*; and, who then would have survived to inform the *Magistrate* of *such Robbers*? Would not the very same *Inconveniencies* that are said in the *Objection* to follow from his *Silence*, follow likewise from his *Death*, since the *dead* are enjoined *perpetual Silence*? But, if it was *lawful* for him to swear, it will, also, be *lawful* for him to observe his Oath; unless, indeed, some *emergent Accident*, (which may come to pass), may *unexpectedly* happen, which may render the *Thing* that was *lawful* at the *Time* of swearing, afterwards *unlawful*. This *Determination*, therefore, must stand *Good*, till the *contrary* be proved by *stronger Arguments*, not only in *this*, but in all other Cases, where *Deceit*, *Fear*, *Tyranny*, and the like, are used, namely, "That, a good Man, either ought "not to take *such Oath* at all, (which seems very
hard

“ *hard in imminent and apparent Danger of Life,*
 “ *if the Thing itself be not unlawful), or, ought*
 “ *religiously to observe what he has sworn.*
 And, thus far concerning the *efficient Cause* of
 an *Oath*: In treating of *which*, I would have
 been *more* concise, could the Subject have ad-
 mitted of it. But, my Discourse increased be-
 yond what I expected, in my Meditations on *this*
 Article. And yet, by consulting *Brevity*, I *wit-*
tlingly omitted *many* Things, that might have been
profitably treated of under *this Head*.



THE
FIFTH LECTURE.

I. **H**AVING, in the foregoing Lectures, dispatched what related to the *material* and *efficient Causes* of an *Oath*, I proceed now to treat of the *formal Cause* thereof. And, since the *Form* of any Thing is *twofold*, namely, the *external* and the *internal*; such Things as belong to this *Class* are to be reduced to *two Heads*; namely, either, as they relate to the *Words*; or, to the *Signs* of an *Oath*. Those Things that are perceived by the *outward Senses* come under the Appellation of the “*external Form*”; but, such as relate to the *Sense* or *Interpretation*, which is the *inward Work* of the human Mind, are to be ranked under the “*internal Form*”. Now, with regard to the *external Form*; an *Oath* consists, either of *Signs alone*; or, of *Words*; or, of *both*. The *First Doubt*, therefore, is, concerning an *Oath* that is taken by *Signs only*, without Words. Some have been of Opinion, that, unless the Words, “*I swear*”; or, *the Name of God*, be expressly used; as, *I swear that I will do a Thing*; or, *by God I will do it*; or, *I call God to witness*; or, as *God shall help me*; or *something* of the like Nature, a bare *Promise only* is thereby

THE THIRTY-SECOND
CASE.

thereby made, but no Oath taken: And, therefore, that, *such obliges* only under the *Peril* or *Penalty* of a *Lie*, but not of *Perjury*: And, consequently, that, whosoever should not perform what he promised would be only guilty of *violating his Faith*, which ought, indeed, to be *preserved* even in *Promises*, but not, in like Manner, of *violating the religious Tie* of an Oath. Among the *Casuits*, *Bartolus* is said to have been of Opinion, that, *Words*, at least, that, *some Words*, were so necessary to constitute an Oath, that, unless God was expressly called upon to bear witness therein, it would not formally be an Oath, nor, under that Name, obligatory. But, Both of these Opinions are now deservedly exploded and rejected by all Men. For, since the chief Use of Words, is, to interpret the Conceptions of the Mind, of which they are the Signs; if these Conceptions may possibly, (though perhaps less commodiously, yet with sufficient Clearness), be signified or made known by some other Means, such as, by Writing, by Nods, or some other Indications, so as to be rendered intelligible to others; then, there is no absolute Necessity for making use of express Words. Thus, if Mutes, or those Persons whose Tongues are cut out; or, those who labour under some grievous Disease; or, who lie Speechless on their Death-beds, should be obliged to contract Matrimony; to make a Will; or, to do any other Thing that could not be done without a clear and undoubted Signification

tion of their Assent, they usually signify their Minds and Intentions, when unable to do it in express Words, by their Nods, by the lifting up of their Hands, or by some other Sign of that Nature, to such as interrogate or put Questions to them. Which Signification of their Intentions is not less Valid, to all Intents and Purposes of Law, than if such Persons had declared them in express and natural Words. In the very same Light, likewise, must an Oath be considered, wherein God is, in some manner or other invoked, as a Witness; and that, whether done openly and in express Words; or tacitly, by such Signs as are sufficient to make those whom it concerns clearly sensible, that the Person they have to deal with, is willing, by engaging God as a Witness, to oblige himself to the Performance of his Promise. Because, such an Act is formally an Oath; and, abundantly sufficient to induce or lay an Obligation upon the Conscience. To this Purpose is that Verse cited by (a) Stobæus out of some ancient comic Writer,

“The Oath is firm, if I but give a Nod.”

He, therefore, vainly thinks, and egregiously (b) deceives himself, who imagines, that, He is, either entirely free from the Bond or Obligation of his Oath, or but, loosely bound

(a) Serm. 25.

(b) Πάίζουσιν οἱ πολλοὶ ἑαυτοὺς, τὰς ἐγγράφους διχα ρημάτων.

Sic corrigente Montacutio, q. d. ante δερμάτων legebatur ἀφούουσιν ἀλλ' οὐχ ὅρκον ὑπολαμβάνοντες. Nazian. Ep. 219.

thereby,

thereby, because, *he uttered no Words commonly used in swearing at the Time of taking such Oath.* For, if a Man should *behave himself to another that (c) puts Questions to him, after he had, as it were, invoked God as a Witness and a Judge, in such Manner as to appear to have fully assented to them; or, if, where it would be beneficial to him, (with respect to some temporal Concern), to seem to have sworn to the Words of another; I say, if a Man, should notwithstanding, knowingly and willingly make use of the Assistance or Evidence of some Friend, who, however, falsely, yet should testify, that he had sworn in that Manner; surely, He, by such a Deed, has bound his Soul with a Bond, and is no less obliged to do according to what proceeded out of the Mouth of the Person that interrogated or required the Answers, than if it had proceeded out of his own Mouth; provided, the Thing were lawful, and ought to be performed; but, should He be conscious, that, the Thing was unlawful; then, he could not, by such Artifice, escape the Guilt of Perjury.*

2. But further; as an Oath may be taken by Signs alone without Words; so, it may, and very often is taken by Words only, without Signs; and that, not only in others, but more especially in such Oaths as drop from unwary People in common Conversation. Now, the Words of an

(c) Ὅρα· ἡμῖν ἐστὶν ἡ τοῦ ἐπερωτησάμενου καὶ πλεονεξήσαντος πλεονεξία.
ibid.

Oath may be considered *two Ways*; either, with respect to the *Things* by which it is sworn; or, with regard to the *Manner of Expression*, and *Form of Speech*, in which it is taken. The *second Doubt*, therefore, is, concerning the *Obligation* of an Oath with respect either to the *Thing*, or *Person*, by whom, or, by which it is sworn; where *two Cases* occur. The *First Case*, is, whether, and how far, is he obliged, who swears by some Creature? It is certain, and granted by all, that, an Oath taken by God the Creator, is both *lawful* and *obligatory*; but, there is some Doubt made concerning an Oath taken by a Creature. Now, in answer to this Doubt I affirm, *First*, That, to swear by a Creature, absolutely, ultimately, and terminatively, in such manner as that the *End* and *Force*, or *Efficacy* of the Oath, is placed in some Creature alone, without Relation to God, is simply unlawful. The Reason is clear: because, that *Reverence* which is due to God only, is thereby given to a Creature. For, an Oath, (as has been before observed), is the *supreme religious Worship* due to God alone, which ought not to be given to (1) any Creature whatsoever;

THE THIRTY-THIRD CASE.

(1) It was the Practice of the Church of Rome, and made Part of their private and publick Devotions, long before the Reformation, that, solemn Prayers were to be offered to Saints departed, who are allowed to be Creatures; and that, not to intercede for them, but to bestow upon them those temporal and spiritual Blessings they stand in Need of.

Now,

whatsoever; forasmuch, as the Person that swears, by his invoking God as a Witness and Avenger, does, by so doing, actually acknowledge him to be, not only the *Inspector* of the Heart, and so, *fully*

Now, were it so good and profitable to invoke the Saints, as the Council of Trent teaches; it is strange, that, so great a Lover of Mankind as St. Paul, when he so frequently commands us to pray, and hath left so many Directions concerning Prayer, should wholly forget to teach us this Lesson: Can it be supposed to be a *Worship* so pleasing to God, when God hath not given us the least Intimation, in his Word, that it is so? For, that, it hath no Foundation in Scripture, we may be assured, when so great a Man, of the Church of Rome, as Cardinal Perron, acknowledges, "That, neither Precept nor Example is THERE to be found for it;" and, when other learned Doctors of that Church, not only confess the same, but also give us several Reasons, why no mention is made of it, either in the Old or New Testament.

But, this is not all. There is not only nothing in Scripture for it, but much against it: For, we are there frequently taught, to offer up our Prayers to God alone, through that one Mediator between God and Man, Christ Jesus.

And, had the Fathers been of Opinion, that, Saints might be invoked, could they have thought the Invocation of Christ a good Argument to prove his Divinity? Would they have accused the Arians of Idolatry for worshipping him, because they supposed him to be no more than a Creature? Could they be so foolish as to deride the Heathens for worshipping dead Men, had they themselves worshipped such? And, would not the Heathens have retorted their Sarcasms? When Heathens and Jews both, so often reproached the Christians for worshipping one that was crucified, had they worshipped not only Him, but his Apostles and Disciples too, would they not much more have reproached them for that? But, what Need of Arguments to prove it, when the Fathers themselves plainly tell us, "That, they made their Prayers to God alone." (Clem. Alex. Strom. L. 7. p. 271.—Tert. Apol. c. 30.—Aug. de Civit. Dei. L. 8. c. 27.)

'Tis unreasonable to say, that, the Fathers speak of *supreme Worship* only, which the Romanists themselves reserve to God, while they allow an *inferior Worship* to others: because, they were not aware of any such Difference of Worship. All religious Worship was, in their Account, such as was due to God alone. The Dis-
tinctions

fully knows, whether his *Mind* agrees with his *Words*; but also, a most just and powerful *Punisher* of the *Sins* of the *Heart*; neither of which can be suitable to, or compatible with, the *Nature*

tinctions of *Worship* into *supreme* and *subordinate*, *absolute* and *relative*, *terminative* and *transient*, as they have no *Foundation* in *Scripture*; so, the *Christians* of the *First Ages* were ignorant of them, they having no such different *Objects* of *religious Worship*, to which these different *Degrees* were to be suited.

And, so far as the *Romanists* themselves make *Sacrifice*, proper to *God*; it seems very absurd to make *Prayer* common to him with others. For, *Sacrifices* were not only accompanied with vocal *Prayers* and *Praises*; they being *sacred Rites*, by which they offered up their *Petitions* and *Thanks* to *God*, as their very Names "*Euclical* and *Eucharistical*, teach us. And, when *Prayer* and *Sacrifice* are considered apart, and compared the one with the other, *God* sets the higher *Value* upon *Prayer*, and desires *That*, rather than *Sacrifice*. If, therefore, *Sacrifice* be a *Worship* peculiar to *God*, it follows, *a fortiori*, that *Prayer* must be so too: As will be further evident from the very *Nature* of the *Thing*: Because, *Prayer* is an *Acknowledgement* of those *Excellencies* in the *Person* prayed to, and a *Payment* of those *Duties* to him, which are the sole *Prerogative* of *God*. For, what are the incommunicable *Perfections* of *God* himself, if not to be present in all *Places*, to know the *Secrets* of our *Hearts*, and to be able to supply the *Wants* of all those that call upon him? And, all these must be supposed to be in *Him*, to whom *Prayers* are addressed by all *Persons*, from all distant *Places* of the *World*. And, what *Homage* can be more proper to *Him*, who is *infinite Power*, *Wisdom*, and *Goodness*, than to submit ourselves to him; to hope and trust in him; and, to cast all our *Care* upon him? And, all these *Duties* we pay to that Being, to whom we make our *Prayers*. And therefore, the *Church of England* had great Reason to charge them with *Idolatry*, who put up their *Prayers* to *Saints*; because, in so doing, they give that *Worship* to the *Creature*, which is due to *God* alone. (See *Homily against Peril of Idolatry*)—(*Preserv. against Popery* 1st Vol. fol. p. 28.)

Here it would be too tedious to reckon up the *Abominations* of this *Saint-Worship*, which are offered to the *Virgin Mary*, with all the blasphemous *Titles* given her, and *Prayers* made to her, "as, if she were more merciful and gentle to *Sinners* than her blessed

O

" Son.

ture of any created Being. Nay, such an Oath, even by the Confession of the *Papists* themselves, would be plainly idolatrous. Secondly, I affirm, that, to swear by *Creatures*, relatively, and, as it were, transitively, as the *Papists* use to do by the *Blessed Virgin*, and other *Saints*, and (2) *Relicks* of *Saints*, that is, (as they explain the Matter),

"Son. What shall I tell of the whole *Psalms* being turned into Addresses to her; the Words "*Goddeß* and *Lady* being put in the Place of *God* and *Lord*?" And that, from the *Eleventh Century*, in which the Form of the numbering their *Prayers* by *Beads* was begun; "*Ten* are addressed to the *Virgin* for one to *God*? How many more *Churches* are built to her, than to *Christ*? And, how many *Pilgrimages* are made to her *Shrines* and *Reliques*? But, how contrary is it to the *Divine Nature*, to *Scripture*, *Reason*, and *Antiquity*, to betake ourselves to a dead and lifeless *Invocation* of those, of whose hearing us we can have no Assurance, and, in which there can be no Comfort, nor true Joy found.

(2) The *Worship* which the *Church of Rome* gives to the *Reliques* of *Saints* is much more absurd than that which they give to the *Saints* themselves.

By their *Reliques*, they understand not only their dead *Bodies*, and all the *Parts* of them, (their *Nails* and *Hair* not excepted); but, all those *Things*, that any way appertained to them; yea, whatsoever touched them, by *Virtue* of that *Touch*, becomes sacred. Upon which Account, no *Things* are had in greater Honour with them, than those by which our *Blessed Lord* was put to Shame. The *Thorns* that gored him; the *Nails* that pierced him; the *Cross* he was nailed to, because, they touched his sacred *Body*, *divine Honour* must be given to them, as the *Great Oracle* of their *Church* hath determined, and by Consequence, to the *Judas* that betrayed him: Tho' with this Difference, that, not only to the true *Cross* on which our *Saviour* hung, but to the *Image* of it, *divine Worship* is to be paid; but, not to the *Image* of the *Nails* and *Spear*, but only to those very *Nails*, and that very *Spear* that pierced him. (Aquin. Part 3. Q. 25. Art. 4.)

And, which is yet more monstrous; though 'tis certain, that, these pretended *Reliques*, if not all, yet are most of them counterfeit, (unless that which is but one, can be a *Multitude*), because, the same

Matter), not ultimately, and terminatively, so as that the *Worship* should terminate, or be placed in them; but, relatively and transitively, so as that it should pass through them, and be by them conveyed

same is pretended to be shewed in many Places; yet, the same *Worship* is given to the False, that is given to the true Reliques; and so, the Body of a Malefactor is sometimes worshipped for that of a Saint; and, the Bones of a Beast, for those of a Martyr. But, suppose, they are true, are they not goodly Objects of *Worship*? Garlick and Onions, (the Egyptians Deities), may justly be accounted "God's right worshipful, when compared with Thorns, and Nails; and Chips, and many other of the Romish Gods. So ridiculous are the Follies and Impieties that are often practised in this Relique-Worship, that nothing equal was ever found among the most sottish Heathen.

I shall, therefore, spare the Pains of shewing, that, it is condemned by Scripture, as well as by Reason, and that nothing like it was practised by the primitive Christians, for more than three hundred Years; and shall only tell you, what Censure, a learned and famous Man of their own Church hath passed upon this Sort of *Worship*. "It is manifest, (saith he), that, in later Times, too much hath been attributed to the Memories and Reliques of Saints; so that, even by such good Men as have a pious Zeal, the Sum, as it were, of Religion, is thought to consist in getting of Reliques, and adorning them with Gold and Jewels, and in building sumptuous Temples and Memories for the Martyrs; and also, by wicked Men, a false Trust is placed in the needless *Worship* of Reliques. And, out of Covetousness, (saith he), false Reliques are forged, and feigned Miracles are published, by which Miracles the Superstition of the People is so nourished, that, they are rather transported into Admiration of the Miracles, than provoked to the Imitation of the Saints, or the Amendment of Life. But, sometimes, by the Craft and Illusion of the Devil abusing Mens superstitious Conceits by Dreams and Visions, new Reliques were revealed, and, by his Operation Miracles seemed to be wrought.—Also, very many are found, who make Merchandise of the Reliques of Saints, whether true, or false; so that, almost every where, they are carried about by Pedlars and the vilest of Men, and with many Lies are recommended to the ignorant Vulgar. But, since at this Day, when every-where all Places seem to be full of the Reliques of Saints, it is to be feared, that, if Bishops and Princes would take that Pains which they ought, in searching out and judging

conveyed *finally* to God; I say, I affirm, that, *this is, at least, Superstitious*: Because, it does not appear, either by the *Light of Reason*, or, from *any Testimony of Scripture*, that, *any Creature*, however *holy*, has a *Power* intrusted with, or delegated to him, by God, of knowing the *Hearts of Men*, or, of *punishing their Perjuries*. *Thirdly*, I affirm, that, to make mention of *any Creature* at the *Time of swearing* without mentioning the *Name of God*, as, if a Man should swear, “ *by his Head*, “ *by his Soul*, “ *by his Salvation*, or, “ *by this Fire*, or, “ *this Bread*; (though, in order to *avoid the Danger of Scandal*, and, because, it seems to carry *some Appearance of Evil*, it would be much more adviseable to abstain *entirely from such Forms*); yet, it does not seem to be *simply unlawful precisely for this Reason*, “ that, the *Oath* ought to have been *sworn*

“ *of true Reliques, great and detestable Cheats would be discovered*,” And, after some other Things of the like import, he concludes, “ *Since, therefore, the true and known Reliques are very few, and many of those which are shewn, may be justly suspected: And, since the frequenting and Veneration of them does not serve Piety much, but very much serves Superstition and Gain; it seems much more adviseable, that, no Reliques should be shewn; and, that the People should be provoked to worship the Reliques of the Saints, that is, to imitate the Examples of their Piety and Virtues, which are extant either in their own Writings, or in the Writings of others concerning them.* (Cal. sand. Art. 20. p. 973.)”—To conclude *this Head*, *We reverence the Memories of the Saints*, especially of the *ancient Martyrs*; and, should we meet with *any unquestionable Remains of their Bodies*, we should pay more than ordinary Respect to them—We bless God for their *exemplary Lives and triumphant Deaths*, but we dare not worship them, and make them *our Gods*.—(Preserv. against Popery, Vol. I. fol. p. 29.)

by God alone. The Reason is, because, by such Forms, either *no Oath* at all is taken; or else, it is taken by God only. But, to set this Matter in a clear Point of Light; and, lest I should seem, either to have brought some *Novel* or *suspicious Opinion* into the Church; or, to have granted too great an *Indulgence* to that execrable Custom of swearing by *Creatures*, which, alas! too universally prevails; we must know, that, in such Forms, wherein some mention of a *Creature* is made by Way of an Oath, God himself is, in Reality, by Interpretation, often sworn by, as, in all those Oaths which, according to the common Manner of Conception, contain in them a certain execratory Force, as, “ by my Soul; or, “ by my Salvation I will do this or that; which are to be understood, as if it were said, “ Let not God be merciful to my Soul; or, “ May God not grant me eternal Salvation, if I do it not. In those Oaths, likewise, God is sworn by, wherein such Things are named, as in their own Natures are peculiarly fit to excite us to some Remembrance of God. Thus, when the Jews, in ancient Times, swore, “ By Heaven; or, “ by this sacred Victim; they either understood, or ought to have understood these Forms, as if they had said, “ By God, whose Throne is in Heaven; or, “ By God, to whom these Sacrifices are offering. But, where the Names of such Things are used as do not in their own Nature contain some special or

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necessary Fitness to excite in us some Thought of God, or, do not seem to imply any thing execratory in them; as, if a Man, sitting at Table, or by the Fire-side, should swear, " By this Bread; or, " By this Fire; though such Forms, on Account of the Manner of expressing them, should seem to contain some Appearance of an Oath; yet, in Reality and by Interpretation, they are not Oaths, but rather mere Obtestations; as shall presently be made more fully appear, when we come to treat of the Third Doubt. Fourthly, I affirm, that, every Oath which seems to be taken by Creatures, whether lawfully or unlawfully, that is, whether it terminate in the Creature, (as the Worship of Images does, in the Opinion of the Bulk of the Papists), which is plainly Idolatrous; or, whether it be taken by the Creature transitively, That it may thence be mediately and ultimately conveyed to God, (by which trifling Subtilty the more Learned among the Papists endeavour to defend their Image-Worship), which yet is superstitious; or, whether it be implicitly and interpretatively taken by God, but still with the Express mention of a Creature's Name; I say, I affirm, that, provided it be really and formally an Oath, and not an Obtestation only, it no less obliges the Swearer to the Performance of what he has promised, than if he had sworn in express Words by God himself. The Reason of this, is, because, in every Oath that is really and formally such, God is, in some Manner

Manner or *other*, invoked as a *Witness*. *Fifthly*, I affirm, (which might, perhaps, be in some Measure made good from what has been already said,) that, though *such Oaths* may, in some sort, be maintained *not* to be *simply* and in every respect *unlawful*, should they at least be understood in the *Sense* and *Manner* by us mentioned; Yet, since 'tis certain, that, *they* are *no less* Obligatory than *others*; and, that there is *no* Necessity why we should *use* them, (because, where there is *need* of an *Oath* we may *use other Forms*; and, where there is *no need* of them, we ought *not* to swear *at all*), it seems to be the *Duty* of every *Christian*, who *seriously* desires to preserve the *Peace* of his *own Conscience*, to abstain *entirely* from *such Forms*. This, in my Opinion, all those will readily be induced to believe, who have *thoroughly* considered, either the *Origine*, or the *End* of *these Forms*. As to their *Origine*, they *partly* owe it to the *frantic Inclination* of the *Chaldeans*, *Egyptians*, and other *superstitious Nations* to *worship Idols*, who used to swear “ *by the Sun*, “ *the Fire*, and *other Creatures*, as by *those* who were, in *their Opinions*, “ *Gods*; and *partly*, to the *Reverence* paid to the *Divine Name* and *Majesty* by the *People of God*, which in the *Beginning* was, perhaps, *pious* and *just*; but, in *Process* of *Time*, and by *Degrees*, degenerated into *Superstition*, especially after the *Lust* of *swearing* increased

through the *wicked Custom* of the World; inso-
much, that, *they* had *ordinarily* rather swear by
any other Thing that came in their Way, than,
(as *Philo* speaks,) “betake themselves to the
“*Creator and Father of the Universe.*” This
the antient *Greeks* also did, (the most of whose
Rites and Customs, as any considering Man may
easily observe, flowed from their Imitation of the
Hebrews), as the (d) *Commentators* upon the
Greek Poets have remarked, who describe them
to have been a People *not wont readily to swear*
by the Gods, but by *such Things as were at*
Hand, or before their Eyes, as, “by *Bread*, “by
Fire, “*Water*, “*Birds*, “*Scepters*, or *any*
Thing else of the like Nature. But, *what* seems
to have *first* arisen from a certain *Reverence* of
the *Divine Name*, degenerated at length into
the greatest *Irreverence* and *Contempt* thereof;
which we may often see come to pass by the
Craft of the *Devil*, and the *just* Judgment of
God who punishes *Sins* by *Sins*; inasmuch, as
when *Piety* once begins to *degenerate* into *Super-*
stition, it *seldom* stops ’till it *ends*, at last, in
open *Impiety*. For, after Men began, out of
Superstition, to *swear* by *Creatures*; the *wicked*
Custom of *swearing* increased to *such a Pitch* of
Licentiousness, that, though *they* abstained from

(d) ὡμυὶ τ’ εἰδὲς τοὶ ἄνθρωποι διὸν ἀλλ’ οὐκ ὁρῶντας αἰσχροῦς. Ari-
stoph. in Avib. ubi Scholiastes docet ex L. 2. Creticorum Socratis
id fuisse à Rhadamantho institutum.

making use of the *Name* of God; yet, *they* neither fixed *any* Bounds to their Oaths, nor were restrained by *any* Fear of perjuring themselves. Hence, says one of the *Antients*, (e) “ He, “ who does not think Scepters to be Gods, imagines it may be lawful for himself who swears “ by those Scepters to act otherwise, than if he “ had sworn by the Gods themselves.” St. Augustine speaks thus concerning the Manichees, “ They swore very often by Creatures, and that too, without any Scruple of Mind. And, without doubt, the Reverence due to an Oath, as appears very clearly from the Words of Christ in the 5th and 23d Chapters of St. Matthew greatly decreased among the Jews from the Time that the Custom of swearing by Creatures began to prevail and grow into Use among them. The Scope of the Words seems, upon comparing both Places together, to be, to correct two, or perhaps three, of their prevailing Errors. The First of which, was, that, they allowed themselves, provided they abstained from making use of God’s Name, a certain Liberty and Freedom of swearing, in very small and trifling Matters. The Second, that, they imagined no Sin was committed by swearing, even in Case the Oath were taken by God himself, provided, what was sworn was true. And, the Third was, that, they ima-

(e) Ὁρκιον σκηπτρον, καθ’ ὃ ὅμνουσι οἱ βασιλεῖς. Suid. 19. contra Fault. 2. ὅμνουσιν ἔτι καὶ νῦν τὸ χλωὸν ὅταν ἐξαπαλᾷ τις τι. Aristoph. in Avibus.

gined, it was *not* Perjury, though a Falsehood should be sworn, while such Oath was taken by Creatures only, but, *not* by God himself. For, so they perversely interpreted that saying, “Thou shalt not forswear thyself, but shalt perform unto the Lord thine Oaths*.” Christ, therefore, teaches, that, those Oaths, in which the Name of some created Thing, but *not* the Name of God, is taken, are *not* therefore, either less truly Oaths, or less binding than those wherein the Oath is taken in express Words by God himself. And, let this suffice to be said concerning the First Case.

3. The Second Case, is, when an Oath is taken by Idols, or false Gods. Now, in order to solve the Doubt in this Case, I affirm, First, That, such Oaths are simply unlawful, plainly idolatrous, and expressly prohibited by God. For, they give or direct that Worship to false Gods which is due to the true God alone, contrary to that divine Precept in the 6th Chap. of Deuteronomy and the 13th Verse, “Thou shalt fear the Lord thy God, and serve him, and shalt swear by his Name.” And, God himself, in the 5th Chap. and 6th Verse of the Prophet Jeremiah, grievously reproaches his People for this Sin, “How, says he, shall I pardon thee for this? Thy Children have forsaken me, and sworn by them that are no Gods.” Secondly,

* Mat. v. 33.

condly, I affirm; that, *such an Oath is obligatory under the Penalty of Perjury, and (f) ought to be made good; insomuch, that he, who breaks Faith so given in a Thing lawful, is perjured. To this Purpose is that Saying of St. Augustine (g) "Because he has sworn by those whom he ought not to have sworn by, and has done what he ought not to have done, contrary to his express Promise, he has surely committed a double Sin."* And again, *"Even he who swears by a Stone, if he swear falsely, is perjured."* If you should object, that, *this is not an Oath, because, God is not called upon as a Witness, forasmuch, as a false God is no God; and consequently, that, such an Oath is not obligatory.* I answer, that, though a *false God be in reality no God; because, (to speak in the Language of the Schools) "As Truth and Entity are convertible; so, Falseness and Non-Entity are also convertible; yet, He is a God in the Opinion of him that swears by him; which is sufficient to induce an Obligation; and, consequently, such an Oath is, upon our Supposition, a true Oath, that is, upon Supposition, that, the Conscience of the Swearer is erroneous; forasmuch, as every Man is bound in Conscience to do what he, according to the Judgment of his Conscience, has confirmed*

(f) Jurejurando, quod propria Superstitione juratum est, Standum. L. 5. S. 1. ff. de jurejurandi.

(g) Epist. 154.

by an Oath. For, the true God, in Case an Oath taken by a false God should be violated, interprets such a Fact as injurious to himself; and that, for this Reason, (h) "Because, the Swearer, though under false Marks and Tokens, yet, by a general Comprehension, bears Respect to, or reflects upon, the Power of the true Deity. Hence, says St. Augustine, (i) "Though the Stone does not hear you Speak; yet, God punishes the Deceiver for the Breach of his Oath." In this Passage, in my Opinion, He has that solemn Rite or Custom of the Romans in View, in which the Person that swore, holding a Flint-stone in his Hand, spoke these Words, "If I knowingly deceive, may Jupiter eject me out of all my Goods and Possessions, as I throw away this Stone;" upon which, he immediately threw away the Stone; and, whosoever did so, was said to swear by (k) Jupiter-Lapis. He, therefore, who forswears himself by a false God, will find, that, the true God will avenge and punish such Perjury; because, as the Author of the Book of Wisdom says, (l) He thought not well of God, despising Holiness. Nay, so confident is St. Augustine in his Opinion upon this Point, that, he scruples not to affirm,

(h) Grot. de Jure Bel. 13.

(i) Epist. 154.

(k) Meminit Plutarchus in Sylla; et Polybius, cujus Interpretis bis per Lapidem vertit per Jovem Lapidem, deceptus, ut videtur, a græco Exemplari in quo pro Διὶ λίθῳ reperit διὰ λίθου. V. Paul. Leopard. 6. Emendat. 15.

(l) Wisd. xiv. 20.

" That

(m) "That, it is, without any Doubt, a less
 " Evil to swear by a false God truly, than falsely
 " by the true God." Which Saying of his, however,
 is not to be understood as simply and in every Re-
 spect true; but, in some Measure only, and pre-
 cisely with Regard to the Nature of Falsehood
 and Perjury, which he only considered in that
 Passage. Thirdly, I affirm, that, upon the obli-
 gatory Power of this Kind of Oath, the Solution
 of that Question depended, which was proposed
 by a certain Man called, "Publicola, to St.
 Augustine, and is copiously treated of by him
 throughout his whole 154th Epistle, namely,
 "Whether it be lawful, to require an Oath from
 "a Person, who, we are sensible, will swear by
 "Idols?" a Question, which he proves to be
 lawful, not only from the Example of Abraham,
 who confirmed the Covenant made with Abi-
 melech by the mutual Exchange of Oaths, as we
 may read in the 21st Ch. of Genesis at the 31st
 and 32d Verses: And, the same Thing was also
 done afterwards by Jacob with Regard to La-
 ban, as we may find in the 31st Ch. of the same
 Book; but, he proves it also, from natural Rea-
 son; because, otherwise, there could be no good
 Cause assigned for entering into Leagues; or, for
 preserving Faith and public Peace with idolatrous
 Persons: Nor, is it prohibited by any Law of
 the true God, to make Use of the Oath or Pro-

mise of a Man to a good End; who wickedly swears by *false* Gods. If it should be said, that, "*this* would be to *partake* of another Man's Sin," St. *Augustine* answers, "That, hereby a Man would not *associate* himself with, or *partake* of the Sin of, *such* Person, who swears by Demons or false Gods; but only *partakes* of the Good arising from his Covenant or Contract, who made *such* Promise, and afterwards kept, or carried it into Execution. And, thus far concerning the second Doubt.

4. The third Doubt follows, which appertains to an Oath with Respect to the Manner of expressing, and the Forms of swearing it. The Reason of Doubting here, is, that, since it is certain, that, every Thing which is *truly* and *formally* an Oath is obligatory under the Guilt and Penalty of Perjury; but, that, those Forms likewise are not so, which are not Oaths, it is necessary, that, we should be able to discern by some certain Character or Mark, which, among those Forms that seem to bear the Appearance of an Oath, are properly and formally Oaths, and, which are not. In which Matter, I confess, none of the *Casuits* that I have been able to consult in the short Space of Time that I have had to consider of this Subject, have given me any Kind of Satisfaction; some of them having only lightly touched upon this Question; and others not having treated of it with sufficient Distinctness and

and Perspicuity. To the End, therefore, that I may propose something as *distinctly* concerning *this* Matter as can be done by one hastening to other Matters, we are to know, that, for the most Part, there must be, as it were, some Confirmation superadded to a bare Assertion or Promise, in order to create Belief; and that, either by an *Asseveration*; or an *Obtestation*; or lastly, by an *Oath*. Which three, though they may not seem to be much *unlike* one another, and to differ rather in Degree, than in Species or Kind; yet, they are in Reality, *intrinsically, formally, and specifically, Distinct* from each other. But, that Distinction, on Account of their Affinity, and of the End to which they tend, as well as of the Words wherein they are expressed, is often so very obscure, that, it is very difficult, either, on the one Hand, not wholly to confound these Three together; or, on the other, dextrously and skillfully to distinguish and divide them. To the End, therefore, that, they may be the better discerned and distinguished from each other; Four Things seem necessary to me to be considered, by which, as by *Criteria* or *Marks*, we may be enabled, in some Measure, to judge concerning every Form of Speech, whether, it be an *Oath*, an *Attestation*, or an *Asseveration* only, namely, “ the Form of the Words; the proper and genuine Force or Sense of them; the Custom of the Country; and, the Intention of the Swearer himself.”

THE THIRTY-FIFTH
CASE.

5. *First*, it may sometimes appear sufficiently evident from the very *Form of the Words*, whether, an *Oath* be taken, or not. As, “do you swear, that you will give me the Sum of an hundred Pounds? Now, should this, or the like Answer be given, “I do swear it, or “By God I will give it, or “As God is my Witness; or, “I promise before God, that I will give it; or, “As God shall help me, I will give it; no Man can Doubt but that an *Oath* is taken. Hence it follows, that, he who makes Use of any such Form of speaking, is, by so doing, actually obliged; and consequently, guilty of *Perjury*, if he does not perform what he has promised. But, as to this Question, “Will you give me the Sum of an hundred Pounds? Should this Answer be made to it, “I will give it; even the very Words themselves shew it to be a bare Promise, in Regard, no further Confirmation of such Promise is added. But, as to this, “You said, you would give me the Sum of an hundred Pounds; Will you give it? “Indeed, I will; or, “Believe me, I will not deceive you; here, indeed, some Confirmation is added to the Promise; But, from the very Form of the Words it is sufficiently evident, that, it is a mere *Asseveration* only, but not an *Oath*; no; nor so much as an *Obtestation*; inasmuch, as God is not called upon as a *Witness*; nor any other Thing, as a *Pledge* of the Faith or Promise

mise so engaged. But, as to this, "How shall I know, that, you will give me the Sum of an hundred Pounds which you have promised me? Take this right Hand; or, Upon the Faith of an honest Man, I will give it; or, As surely as this Sun shines I will do it; or, Never believe me again, if I do it not." Here the very Words themselves shew, that, these Forms contain more than a bare Asseveration; but, still, that, no Oath is thereby taken. Those Forms, therefore, are rather to be called "Obtestations, in which, for the further Confirmation of a Matter promised, or even assevered, we interpose something that is dear to ourselves, or certain, and well known to all Men, as a Pledge of our Faith. Where, therefore, it may clearly enough appear from the very Form itself of the Words, whether, that which is assumed or made use of for the Confirmation of a Promise be properly an Oath, or a bare Asseveration, or even an Obtestation; there, 'tis plain, there can be no need of any further Examination or Dispute about it.

6. But, because it very often happens, on Account of the Similitude of Forms; or, of the doubtful Sense of some Word; or, the Latitude of its Signification; or, for some other Reason; that, no certain Judgment can be formed from the Words themselves as spoken, whether, an Oath be taken, or not; We must, in the second Place, at-

tend to, and observe the *proper Force*, and *genuine Sense* of the Words, and from *thence form a Judgment* thereof. For, from the *Form of the Words* it may appear, that, *all those Phrases*, in which, either the *Name of God*; or, the *Greek Particle*, "*ἵνα*", with an *Accusative Case*; or, the *Latin Preposition*, "*Per*"; or, the *English Monosyllable*, "*By*", are made use of, are *formally Oaths*. For *this Reason* alone *Soto* was induced to think, that, there was *so great a Difference* betwixt *these Forms*, "*By Faith*", and, "*In Faith*", "*By Truth*", and, "*In Truth*", that, he pronounced the *Former* to be *formally Oaths*, but, *not the Latter*. But, should the *Force and genuine Sense* of the Words be *thoroughly examined and considered*, there will *no Difference* be found betwixt the *Prepositions By*, and *In*, provided *they* are applied to the *same Thing*. For, according as the *Thing*, to which *they* are applied, is, either *sacred*, or *civil*; so, a *Judgment* ought to be formed concerning each of them. That *Form*, therefore, "*By God*", is, by *Virtue and Force of the Words*, properly an *Oath*; because, the *Name of God* is a *sacred Thing*; and, whosoever speaks in *that Manner* invokes *God as a Witness*. But, *that Expression*, "*By Faith*", (though according to the *Custom of some Country*; or, the *Intention* of the *Speaker*, it may be an *Oath*); yet, it is *not an Oath by Force or Virtue* of

of the Words, but, an *Asseveration* only; or, at most, but an *Obtestation*; because, *human Faith* is not a Thing *sacred*, but *civil*; and, whoever speaks in that Manner does not invoke God as a *Witness*, but only pronounces upon his own *Faith*, or declares, that, the *Matter* is told or asserted by him *seriously*, *sincerely*, and, with *Deliberation* of Mind. For, This is the *genuine* Explication of those Words, “ By my *Faith*, whether in an assertory, or promissory Matter, namely, “ I speak from my Heart, and affirm truly what I think; I pawn my *Faith* or *Credit* with you, that, the *Matter* is so; If I knowingly deceive you, never believe me more for the *Future*.”

The Interposition, therefore, of *Faith* is not an Oath by *Virtue of the Words*; unless, perhaps, where it recalls, or refers us to some Oath formerly taken by us: As, when in this University of Oxford, any one is required to answer *Interrogatories* by *Virtue of his Oath* in this Form, “ You shall true Answer make, pursuant to your Faith given to this University——— And thus, likewise, when the *Convocations* are solemnly appointed and proclaimed by the *Beadles*, at which the *Doctors*, *Regent-Masters*, and *Non-Regents* are ordered to be present in this Form, “ Upon your *Faith*; Upon your *Faith*; Upon your *Faith*.—— And, it seems to me, that, the very same Thing ought also to be said, (though I know, many are of another Opinion), concerning that

Expression of St. Paul, (n) “ *I protest by our Rejoicing which I have in Christ Jesus our Lord, I die daily*, namely, that, it is not properly an Oath, notwithstanding it has the Particle *by* added to it; but only a serious *Asseveration*, importing, “ That, as he was at all Times obnoxious to Death; so, he was every Day prepared for Death, in case God should be pleased to call him to it.

17. Now, from what has been already said upon this Head, it may, perhaps, not inconveniently be determined, what is to be thought of those Words of Joseph to his Brethren, (o) “ *By the Life of Pharaoh ye are Spies*; concerning which Interpreters variously dispute. There are some of Opinion, that, as Joseph had now for a long Time been conversant with the Courtiers of Pharaoh, (who, by daily Conversation with him, might have communicated some of their Infection to him); so, by being inured, at least in this Respect, to their Customs; he might, by Degrees, have learned to swear after their Examples, “ *By the Life of the King*; in the same Manner, that the Romans in latter Ages used, out of Adulation and Flattery, to swear, “ *by the Genius of their Emperors*. But, I cannot easily suffer myself to form a worse Judgment of the Words or Actions of Men, *illustrious for Piety and*

(n) 1 Cor. xv. 31.

(o) Gen. xli. 15.

Virtue, than the *Matter* itself necessarily requires. I am sensible, *most* of the *Antients* have set so great a Value upon the *Reputation* and *Fame* of *holy* Persons, as to have indulged their own Fancies too much in endeavouring to excuse their manifest Failings and Mistakes, by throwing a Veil of *Honesty* and *Virtue* over them. An Error this, somewhat at least more pardonable and honest, than the Error of *those*, who, in this last Age, love, on the contrary, curiously to inquire into the *Slips* and *Mistakes* of good and pious Men; and who, lest they should want Matter of *Calumny*, endeavour with Pleasure to asperse Men of *Uprightness* and *Sincerity*, by perverting even their virtuous Actions themselves to evil Purposes. Others interpret that saying of *Joseph* in somewhat a milder Sense, namely, "that, he made use of this Form of swearing, which was familiar to the King's Courtiers, for that one Turn only, in order the better to disguise and conduct his Affair with his Brethren; and lest they should, by some Means or other, perhaps discover or mistrust who he was, if he did not skilfully represent the Person of the King of *Egypt* which he had assumed. But, I am unwilling to lay the Burthen even of this Fault, though somewhat lighter than the other, upon the Shoulders of a very holy and virtuous Person, without great Necessity.

The *Third* is the *Opinion* of those, who free *Joseph*, indeed, from *all Blame*; but, for *this Reason*, that, before *Oaths* of that Kind were forbidden by *Christ*, they think any one might have sworn by a *Creature*, without *Sin*. Which *Opinion*, I must own, I so far approve, as it acquits and supposes *Joseph* to be free from *Blame*; but, can, by no Means, approve of the *Reason* assigned for it. For, in the *first Place*, it does not appear, that, *Christ* more particularly prohibited *Oaths* by *Creatures*, than those that were taken by *God himself*. No; He equally prohibited *all Oaths* of both Kinds, that were not necessary. Nor, was there any Necessity to forbid those *Oaths* by a new Prohibition, which were always unlawful in themselves. And, as to what He particularly said concerning *Oaths* by *Creatures*, it only tends to shew, that, if such *Oaths*, contrary to the *Opinion* of the *Jews*, were taken, they were no less Obligatory than those that were sworn expressly by the *Name* of *God*. Nor, in the *second Place*, is it true, that, it was lawful for pious Men, before the coming of *Christ*, by Virtue of any divine Dispensation or Indulgence, to swear by *Creatures*; in Regard, that Kind of *Worship* is due to *God only*, as has been already proved from the 6th Ch. of *Deuteronomy*, and the 5th Ch. of the Prophet *Jeremiah*. Which latter Place, though it may, perhaps, in a peculiar Manner, relate to them
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that swore by Idols or false Gods; yet, the Force of the Argument used by the Prophet being general, regards and extends to those likewise that swear by Creatures, because, it may justly be said of Creatures, (p) "That, they are no Gods. Thirdly, the Nature itself of an Oath, as appears from its Definition, since it requires, that, God should be invoked as a Witness, sufficiently shews, that, it was never lawful to swear by Creatures. Nay, the Heathens themselves confessed and taught, (q) "That, Invocation, or the taking of the Name of the Gods, belonged to the Essence of an Oath. Now, since these Things stand thus; and, since it appears, that, the Reasons alledged cannot sufficiently excuse Joseph from all Guilt; the fourth and last Opinion remains, which, by explaining the genuine Sense of Joseph's Words, supposes, that, he did not swear at all; and consequently, that, he could not have been guilty of any Sin, by making use of so bad a Form. For, if an Oath should be taken, "By the Life of Pharaoh; either, the Life of Pharaoh must be invoked as a Witness, which is very Impertinent and Absurd; or else, it must contain something execratory, or imprecatory in it; But, what that should be, without putting a very harsh and strained Interpretation upon the Words, it is not easy to divine.—But, the Sense of his Words will be very natural

(p) Jerem. i. 7.

(q) Arift. L. 2. Rhetor.

and *easy*, if expounded in an *indicative* or *declarative Manner of Speaking*. Thus, “*By the Life of Pharaoh ye are Spies*, that is, “*As true and certain as it is that Pharaoh lives; so true and certain it is, that ye are Spies*. Thus, the *Form*, “*By this Sun that shines I tell you Truth*, imports the *same Thing*, as if it had been said, “*What I say to you is as true, as that this Sun shines*. Neither of *which Forms* is, in my Apprehension, *formally* an *Oath*; but rather an *Asseveration* confirmed by a *vehement Kind of Obtestation*. I am *not*, indeed, ignorant, that, *some Objections* may be brought against *this Exposition*, which, though they are *not* of *such Weight* as to induce me to *change my Opinion* in *this Matter*; yet, they are of *such Moment* as to make me think it *just and reasonable* to leave every Man at *Liberty* to follow his *own Opinion*, in Case He does *not* condemn *That* of others; and provided, he will, in the *mean Time*, grant me *this*, “*That, it cannot be clearly evinced, unless it may be made otherwise appear, at least, from the Force of the Words, That, Joseph in this Passage made use of any Oath, at all; in Regard, the Words themselves contain no Invocation of a Witness; nor Demand of Punishment, in Case it should be broken*.”

8. The third Criterion or Mark, whereby to discern, The THIRTY-SEVENTH CASE. whether, an Oath be taken, or not, is, “The Custom of some Country, Place, or Community. For, it may happen, that, some Modes of speaking, which do neither from the Form, nor Force, nor genuine Sense of the Words, appear to be Oaths; yet, from the received Use or Practice of some Nation, or, the common Estimation of Mankind, may be looked upon, “as Oaths; and, that those, on the other Hand, which you might judge from the Words to be Oaths, are yet accounted “No Oaths. The Reason is, because, the Value of Words is to be estimated in the same Manner with that of Money; neither of which are naturally valuable, but become so, by Appointment, or Agreement; but, more especially by Use; that is, neither of them are worth more than just what they are estimated, or valued at. Of this Matter we need go no further for an Example, than to some Forms used in our own Country. For, though, “Faith and “Truth, (especially in this Matter), are to be considered exactly in the same Light, or as Words of the same Signification and Import; inasmuch, as He, who is void of Truth, is also void of Faith; and, whosoever is void of Faith, is, on the contrary, void of Truth; yet, an Opinion has by long Use prevailed among the People of our Nation, that, whoever says, “In Faith,

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Faith, shall be deemed to have taken an *Oath*; but, *He*, who says, “ *in Truth*, shall be judged not to have sworn at all: And, what is no less contrary to *Reason*, that, the *Form*, “ *in Truth*, shall be deemed a mere *Asseveration*; but, “ *By my Troth*, shall be looked upon to have the *Force*, even of an *Oath*. Now, *He* would be very impertinent, who should enquire for any other Reason of this Matter than that which arises from Use or Custom, which is “ the absolute Master “ of Language; (r) “ The sovereign Judge and Rule of Speech. From whence it follows, that, *He* who, attending to, and observing only, the *Form* or *Force* of Words, indulges himself in the Liberty of using such Modes of speaking in common Conversation without Distinction or Scruple, which have by long Custom obtained among us the *Force* and *Estimation* of Oaths, violates the Precept of Christ against swearing; gives Offence to his Brother; and, exposes himself to the Danger of Perjury.

9. The Fourth and last Criterion, or Mark, by which an Oath may be known, is, “ The Mind and Intention of the Swearer. For, suppose, it should not appear, either from the Words themselves, or, from the common Estimation of Mankind, that, some certain Form of Speech were an Oath; yet, should a Man by

(r) Hor. de Art. Poet.

making use of *such Form*, either, through *some Error* of Mind, imagine he had taken an Oath; or, would be thought, out of *some deceitful View* or *Intention*, to have sworn; yet, *such Form*, though *not* in reality and in itself an Oath, will, notwithstanding, as to *such Man*, be to all Intent and Purposes as *valid* and *binding* in Conscience, as if he had *actually* taken an Oath; in-
 somuch, that, should he violate his Faith so given, he would *not* only be guilty of *Falsehood*, but of *Perjury* also, in the Court of Conscience. For, as, in the Judgment of the *Apostle*, he that esteems any Thing to be (s) *common* or *unclean*, which is *not* in itself *common*; yet, it is *common* with respect to him; in-
 somuch, that he is obliged to *abstain* from it, as from a Thing really *common* and *unclean*: So, by the *Rule of Contraries*, whoever esteems any Thing to be *holy*, which in itself is *not* *holy*; yet, it is *holy* as to him; in-
 somuch, that, he is bound to *abstain* from it, as from a Thing truly *holy*. And, if an *Error* of the Mind is *sufficient* to induce an *Obligation*; much more will an *evil Intention* of *deceiving* induce a *higher* and *more immediate* *Obligation*; because, it is but just, that, an *impious* and *deceitful* Person should fall into the *Pit* which he *digged* for his *Neighbour*; and that, his-own *Foot* should be taken in the *Snare* which he laid for another.

(s) Rom. xiv. 14.

10. The Use of the *Four*
 The THIRTY-NINTH CASE. *Criteria* or *Marks* which I
 have now explained, is, that,
 if a *Question* or *Scruple* should at any time arise
 in our *Consciences* concerning some *Form* of
Speech which seems to bear the *Appearance* of
 an *Oath*, we may discern, whether, it has truly
 and formally the *Nature*, and consequently, the
 obligatory *Force* of an *Oath*, or not; by having
 immediate *Recourse* to these *Criteria*, or *Marks*,
 and examining the *Form* by them, as by *distin-*
guishing Characteristics; And that, in the *Order*
 and *Method* which I first proposed, namely,
 by beginning with the first *Criterion*; and then,
 by running over each of the others, if there should
 be occasion; that is, unless it should sufficiently
 appear from some *Examination* already made, that,
 it is really an *Oath*. For, that may appear to be
 an *Affirmation*, that is, to be an *Oath*, from an
Examination thereof pursuant to some one *Note*
 or *Mark* only; but, it cannot be a *Negation*, or
 denied to be an *Oath*, unless upon a *total* and
thorough Examination and *Trial* thereof, pursu-
 ant to every *Note* or *Mark* above-mentioned.
 Now, the *End* of this *Examination* or *Trial* is
 twofold; the one, that, every Man may consider
 before he swears, whether it may be expedient
 for him to make use of such a *Form*, or not?
 And, the other, that, he may understand, after
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he has taken an Oath in such Form, how far he is obliged to perform it?

11. We have hitherto treated of that Oath which is taken by Signs, without Words; and of that, which is taken by Words, without Signs: We shall now proceed to speak of the Oath, which is taken, both by Words, and Signs together. Now, Signs, in Conjunction with Words, are used, either for the greater Solemnity of the Act, or Dignity of the Person. The Fourth Doubt, therefore, is, concerning a solemn Oath; where the first Case or Question, is, concerning the Rites and Ceremonies used in a solemn Oath. Many Authors have wrote many Things concerning the Rites and Ceremonies of the Heathens, which, it is neither worth our while, nor pertinent to our present Purpose, exactly to recount. Some of the chief of them have been pointed out by Alexander the Neapolitan in the 10th Chap. of his 5th Book concerning "Festivals. Those are accounted the most sacred, which are sworn in a conceived or set-Form of Words by Persons, who, at the same time, (t) touch the Altars of the Gods. The next to them in Sanctity are such as are sworn by (u) Jupiter-Lapis. Now, those are said to

(t) Is, nisi Aram tenens juraret, nemo crederet. Cicero pro Flacc. Et ut Mos Græcorum est, jurandi Causa ad aras accederet. Id. pro Balb.

(u) Jovem Lapidem inquit, quod sanctissimum Jusjurandum est habitum, paratus sum jurare. A. Gell. 1. Noct. Att. 21.

swear in a *set Form* of Words, who, either *all* repeat the *prescribed Words* of the Oath; or else, some *one Person only* repeats them, while the *rest* signify *their Assent and Consent* to (x) *his Words*, in a *Word* or two, or by *some Sign*. (y) Among the *antient Hebrews*, two *Rites* or *Customs* only are *principally* mentioned to have been *observed* in the *sacred Writings*. Of *which*, the *First* was *peculiar* to those *Oaths*, which *Superiors*, by *Virtue* of their *Authority*, *required* from their *Inferiors*, in order to make them *faithfully* execute *their Commands*. The *first Example* we have of *this*, is, in the 24th Chap. of the Book of (z) *Genesis*, where *Abraham*, requiring an *Oath of Fidelity* from his *Servant* concerning the *Choice* of a *Wife* for his Son, commands him “to put his Hand under his Thigh.” *Jacob* also, being on the Point of Death, ordered his Son *Joseph* to do the *very same Thing*; as we may read in the 47th Chap. of (a) *Genesis*, where he charges him to take care of his *Sepulture* in the Land of *Canaan*. Now, whether, they observed *this* (b) *Rite* as a *Sign* or *Token*

(x) In verba jurabas mea. Hor. Epod. 15. Jurare in verba Magistri. Id. 1. Ep. 1. Pavidus Tribunus adjurat in quæ adactus est verba. Liv. L. 7.

(y) Præjurationes facere dicuntur qui ante alios conceptis verbis jurant, post quos in eadem verba jurantes tantummodo dicant, Id. Me Fest.

(z) Gen. xxiv. 2.

(a) Gen. xlvii. 29.

(b) Suspiciens, tenditq; ad sidera dextram;

Hæc eadem, Ænea, terram, mare, sidera, juro.

Virg. Æn. 12.

of

of that Faith, by which they believed in that blessed Seed which was to issue from the Thigh of Abraham; or, in Commemoration of the Covenant, which had been before entered into with Abraham, upon his Circumcision; or, for whatever other Reason it was; certain it is, we nowhere read, that, it was grounded on any express Command of God; but was, as far as appears to us, voluntarily and freely instituted. By so much the more, therefore, the perverse and superstitious Severity of those Men ought to be admired, who condemn all Rites and Ceremonies instituted by human Authority for Order and Decency sake in divine Worship, without the express Command of God himself, as execrably Idolatrous, and not to be tolerated in the Churches of Christians. The second Rite or Custom used by the People of God at the Time of swearing, was, “The lifting up of the Right Hand towards Heaven, which they made use of in such Oaths as were taken voluntarily and spontaneously, and not by the Authority or Command of another. A Rite this, which the People of most Nations have observed; but, whether, in Imitation of the Jews, as they did in most other Things; or, whether, by some Instinct or Direction, as it were, of Nature, they looked up to God whom they believed to dwell in the higher Regions, is not certain. However, we have the first Example of this, as well as of the former Custom

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Custom, in the History of *Abraham* himself in the 14th Chap. of *Genesis*, but founded upon no special Command of God that we know of. Yet, this Rite or Custom prevailed afterwards among his Posterity to such a Degree, that, by a Metonymy of the Adjunct, the Phrase of “*Lifting up the Hand*,” was frequently put for the very Act itself of swearing. Yea, and the Word itself, which, in the Original, properly signifies, “*The Right Hand*,” is not seldom taken, both by Jews and Arabians, to signify an Oath. Hence, some of their Interpreters understand those Words of the 144th Psalm at the 8th and 11th Verses concerning an Oath, “*whose Mouth speaketh Vanity, and their Right Hand is a Right Hand of Iniquity*,” or rather of, “*Lying and Falsehood* ; for, so the Hebrew Words properly signify. Yea, and God himself, where He is introduced as swearing after the Manner of Men, makes use of the same Form of Speech, “*I lift up my Hand to Heaven, and swear by my Right Hand*,” as we may read in the 32d Chap. of *Deuteronomy*, at the 40th Verse. To which Rite or Custom we often meet with Allusions, not only in the Prophetic, but in the other Books both of the Old and New Testament. And, consequently, it may again be justly wondered at, that, this particular Rite or Ceremony should not only be tolerated in Christian Churches, but also approved of by those very Men, who yet, so far disapprove
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of the Use of other Rites of the Old Testament, (though they are all of the same Nature, and equally lawful or unlawful), that, they cry out and exclaim, that, they ought not only not to be tolerated, but entirely exterminated out of all sacred Congregations. I shall not here mention what relates to the Rites of Christians, nor to the various Ceremonies of the Primitive Church which yet remain, and are variously observed, according to the Diversity of Times and Places. I shall only take Notice of one, which is derived down to us almost from the very first Age of the Church, and still continues to be used, namely, "That, of taking an Oath in a conceived or set Form of Words, "having first laid our Hands "upon the Holy Evangelists, or Gospels of God." And, to add no more, all those Kinds of Oaths, in which, beside the Pronunciation of the Words, some external visible Motion or Gesture of the Body is also used, such as, "The touching of the "Altar; "of the Thigh; or, "of a Book; "the throwing away of a Stone; "the lifting up "of the Hand, and the like, are, by Balsamon usually called, "Corporal Oaths."

12. The second Case or Question is, concerning those Rites and Ceremonies, which are wont to be

THE FORTIETH
CASE.

used in solemn Oaths, whether, and how far, do they strengthen the Obligation of an Oath? Which

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is no other than to ask, Whether, a *solemn and corporal Oath* obliges more strongly than a *simple one*, in such manner as that the *Violation* of a *solemn Oath* would be a more grievous *Act* of *Perjury* than that of a *simple one*? In Answer to which, I affirm, *First*, That, it is granted, not only by the *Casuits* of the *Popish Party*; but also, by those of the *reformed Churches*, that, the *Solemnity* of the *Act* aggravates the *Sin* in an *Oath*, as well as in a *Vow*; in regard, the *Nature* of an *Oath* and of a *Vow*, in most Things, especially in respect of their *obligatory Virtue*, is much alike. For, says one of them, (c) “To swear corporally is more than to swear by an Instrument in Writing, or bare Words.” And another, (d) “By how much the more the Solemnities are increased, by so much the greater is the Perjury. Secondly, I affirm, that, notwithstanding it should be granted, that, the Perjury is the greater; yet, a *solemn Oath* is not of itself, and in its own Nature, more obligatory than a *simple one*; because, the *Obligation* of an *Oath*, as an *Oath*, (for, it binds also as it includes a *Promise*, but, I say, “as an *Oath*), arises precisely from hence, that, *God* is therein invoked, both as a *Witness*, and as an *Avenger*. But, *God* is invoked as a *Witness* and *Avenger*, no less in a *simple*, than in a *solemn and corporal*

(c) Gothofr. ad Lib. 3. Cod.

(d) Si minor se major.

Oath; for, *such Invocation is precisely made by the Pronunciation or speaking of the Words, which is the very same in a simple as in a solemn Oath; and, not by any corporal Motion, or concomitant Sign, in which the Solemnity of the Oath consists.* I affirm, therefore, *Thirdly*, That it comes to pass by *Accident* only, that, the *Solemnity of an Oath aggravates the Sin of Perjury*; yet still, *necessarily and inseparably, but not contingently*; and that, for two Reasons: *First*, "on Account of the greater Deliberation." For, the *Solemnity of external Rites is ordained and used, in order to impress the greater Reverence of the Act, and, as it were, a certain Sense of Religion, upon the inward Mind, to the End, the Agent may be bent upon, and employ himself about, the Act, with the greater Attention and Deliberation: And, every Sin, all other Things being equal, is certainly more grievous, by how much the more deliberately it is committed against a precedent Act of the Will.* *Secondly*, The *Perjury in a solemn Oath is the greater and more grievous; because, it gives the greater Scandal: For, by how much the more solemnly a Thing is done, by so much the more attentively is it observed, and by the greater Number of People; and, consequently, if a Sin be therein committed, the Example will be the more notorious, and pernicious.* *Fourthly*, I affirm, that, since it is

granted; for the greater Reverence of the Act, that, *a certain Solemnity of Rights and Ceremonies* as well as *a prescribed Form of Words* may be used in an Oath, which is a Part of divine Worship; it does not appear, that, *any just Reason* can be assigned, why, both a *moderate Use of solemn Rites and Ceremonies*, and *a certain Form of Words*, should be banished out of the other Parts of Public Worship. I cannot, indeed, but confess, that, though I have not *only* carefully reflected upon this Matter with myself; but also, inquired very often, and seriously of others about it; yet, I could never, as yet, meet with a *sufficient Reason* of the Difference, why, *such Additions* should not be either entirely removed and taken away from Oaths, as Superstitious; or else, be retained as profitable Helps to Piety, in the Rest of God's Worship. Whoever can perceive the Reason of the Difference, or unriddle this Matter, let him. For my Part, I own, I cannot comprehend it.

13. The Fifth Doubt remains, which admits almost of no Difficulty, and may be dispatched in very few Words; namely, concerning an Oath, wherein some Part of the Solemnity is omitted, out of regard to the Dignity of the Person; as, when an Oath is tendered to a Prince at his Coronation; or, to a Peer; or, to some Great Man upon taking some honourable Trust,

THE FORTY-FIRST
CASE.

Trust or Employment, he is desired only to promise on the Word of a Prince; or, upon his Word of Honour, without making use of ordinary Ceremonies, (such as, "the touching, or kissing of a Book), after the Form of the Words has been read to him in which he is to swear, that, he will faithfully observe the Contents of them. To which Request should he make answer, laying at the same Time his Hand upon his Breast, that, he only promised to observe them, the Question is, whether, this may be looked upon as an Oath, fully and completely taken? In this Case, I affirm briefly, that, the Person sworn in that Manner, is no less bound in Conscience faithfully to perform all that he has promised, than if he had, with his own Mouth, pronounced every Word and Syllable that were only read before him; and, had performed all the other Solemnities with the greatest Exactness. And, this may suffice to be said concerning the external Form of an Oath. You will, perhaps, expect, that, I should comprehend in this Lecture, as, indeed, I intended, all that relates also to the internal Form of an Oath. But, that Part contains some Doubts, both of singular Importance and Use, which deserve to be copiously treated of; and, especially this Question, "In what Sense ought an Oath to be understood?" To the End, therefore, that,

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I may give you *no* Offence by *too great* Prolixity, or injure the Subject by *too much* Brevity, I will endeavour, in my *next* Lecture, to dispatch *all* that remains to be said concerning the *internal Form*, together with the *Final Cause*, of an *Oath*, which neither contains many, nor very difficult Doubts,



THE

THE
SIXTH LECTURE.

I. **W**E formerly propos'd to Treat of the *twofold Form* of an Oath, namely, the *External*, and the *Internal*. The *External*, which we dispatch'd in the *preceding Lecture*, contains the *Nature* and *Account* of such *Signs* and *Words* as are the *Objects* of the *outward Senses*. We shall now proceed to the *Internal*, which, consisting in the *Sense* and *Interpretation* of *Words*, is the *inward Work* of the human Mind. But here, by the *Sense* of *Words*, I understand not *that*, which is to be consider'd with *Respect* to those *Forms*, whereby *Something* is signified and denoted to be sworn, (for, of *this* we have spoke already among the *Criteria* or *Marks* by which we are to discern, whether an Oath be taken or not, when we treated of the *external Form*); But, I understand *that*, which is to be consider'd in *Respect* of the *Promise* itself, which is confirm'd by the very *Act* of swearing, and contain'd in the *Words*. A Matter *this*, indeed, of great Moment, as well as of manifold Use; and, upon both these Accounts, highly worthy of your closest Attention. For, it is of great Moment to know, in what *Sense* an Oath is taken; because,

that Person *perjures* himself, who does *not* perform *what* he has *promised* in the *same Sense*, in which he *promised*, or *ought* to have *promised* it. Nor, is it in *Oaths alone* we must take Care, but also, in *Vows, Promises, Leagues, Contracts*, and *all other Conventions*, in which we ought to act *faithfully* and *honestly*, that, we perform our *Promises* in the *very same Sense*, in which we made them. But, to return to the *Point*. The *Words* of an *Oath* must, of *Necessity*, be, either *clear*, or *doubtful*.

2. The *first Doubt*, is, concerning the *Obligation* of an *Oath*, the *Words* of which are *clear*, and contain a *manifest* and *undoubted Sense*. Where, *four Cases* occur. The *first*, is, when the *Words* of an *Oath* or *Promise* are *so clear*, whether, in the *first Place*, “ by their *own proper* and *common Signification*; or, in the *second*, “ by the *received Custom* and *Manner of speaking* in some *City* or *Country*; or, in the *third*, “ by the *mutual Consent* of *Parties*; that, there can be *no Disagreement* at all, among the *Persons* interested, about the *Sense* of them. As, for Example in the *first Case*, “ I *Titius* do promise to give you *Caius* my Land at *Tusculum*, provided, you will pay me an hundred Crowns within the Space of one Month. The following are Examples of the *second Case*; as, should *John* contract in *this Manner* with *Peter*, in the *Language* of our *Country*, “ I will give you to-morrow an hundred

dred Weathers out of my Flock for *an hundred Marks* that I owe you; or, I will pay you *three Bushels of Wheat* every Year, for the Use or Profit of your Farm. Now, though, in the former of these Examples, the Expression, “*an hundred*,” be so *ambiguous* as sometimes to signify what in *Latin* is properly called, “*Centum*,” that is, “*five Score*,” and sometimes a greater Number, namely, *six Score*; yet, from the *universally received Use* of that Expression throughout the whole Kingdom of *England*, the *Intention* of the Persons contracting is so *manifest*, that, there can *no* Contest arise concerning the *Sense* and *Meaning* of the Word; Forasmuch as, the Expression, “*An Hundred*,” as every one among us very well knows, *denotes*, when we speak of *Money*, “*five Score only*”; but, “*six Score*,” when we speak of “*Cattle*.” In the latter Example likewise, the Expression, “*a Bushel*,” in Regard it signifies according to *common Use*, *one Roman Bushel only* in the *South* of *England*; but, *two Bushels* in the *North*; yet, *Use* defines and ascertains the *Ambiguity* of the Word, “*Bushel*,” in *such* Manner, as that, should a *Contract* be made in *either* of those Places, there could *no* Difference nor Dispute arise among *honest Men* concerning the *Sense* of the Word. The following is an Example of the *third Case*, “*Titius*,” having a Mind to *buy* from *Caius*, one Field out of many, which borders upon his *own Land*;
and

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and, having several Times *before* talked to him about the *Price* thereof; upon meeting him on a certain Day, asks him, "Will you give me your Field for the *Price* I mentioned to you? I will give it." Swear, that you will give it. I do swear it. Now, though no particular *Mention* is made of that Field which borders upon the Land of *Titius*, yet, it is certain, from their previous Discourse, that, That very same Field is peculiarly meant and understood. And, this Kind of Oath does, indeed, oblige the Swearer, faithfully to perform what he promised in that Sense, upon which, 'tis evident, both the contracting Parties, in Case there had been no Fraud on either Side, had mutually agreed. *Caius* would break his Oath, should he give *Titius* any other Field beside that concerning which they had before discoursed and treated; and, He that agreed to deliver an hundred Weathers, should he deliver but five Score, would not faithfully fulfill his Promise.

The FORTY-THIRD
CASE.

3. The second Case, is, concerning an Oath, where the Words, according to the common Signification or manner of Speaking, seem to be clear enough in themselves; but yet, the Swearer, not having an Intention to oblige himself in that Sense which the Words plainly bear, imagines in himself some other Sense, of which the Words themselves may, on Account of the Ambiguity

guity of some Expression or Phrase, be in some Manner or other capable; but which he industriously desires to conceal from the Auditors; so that, he takes the Words in a Sense quite different from that, in which he thinks or desires his Auditors should apprehend and take them. This is that (1) *Verbal Equivocation*, which is principally maintained

(1) The learned *Abbe La Bertbier*, concerning *Equivocations* and *mental Reservations*, speaks thus, "What is it in Effect, but mere *Jugling*, which *Sanchez* (the *Jesuit*) teaches (L. 3. c. 6. N. 37.) on the Art of swearing by a *double Entendre*? that is, to swear, and, not to swear in a Breath: So that, by the Means of such *ensnaring Oath*, you make others believe a Falsehood, without per-juring yourself. It is a curious Secret, I profess, and a very plain one too: For, all the Mystery of it consists in cutting off a Letter. But, as curious and simple as it is, it is no less than *down-right Fraud*; which take as follows, and then judge of it." "When one goes to swear, (says this *Jesuit*); or, when one is pressed to take an Oath, say, *Uro*, which signifies, *I burn*, instead of *Juro*, *I swear*; which, whether you burn or not, would be but a *venial Lye* at most.—I desire the *Magistrates*, (says this *Abbe*;) to take Notice of this; otherwise, the Gentlemen of the House of Wisdom, that is, the *Jesuits*, may make Fools of them, when they put them to their Oaths. And here it may be justly added, "If this be practised by one *Papist* towards another in France, or other *popish Countries*; how much more reasonable is it to suppose it practised in these Kingdoms by *Papists* towards *Protestants*, since the *Jesuits* teach, "That, no Faith is to be kept with *Hereticks*?"

Here is another Secret of the same *Sanchez*, (ibid. N. 15. 19. & 26.) which is of great Help; "If, says this Contriver of double Meanings, a Man should swear, that, he has not done a Thing, which in reality he has, meaning some other Thing, within his own Breast, which he has not done; or, on some other Day than that given for the Thing done; suppose, it be, before he was born, or any such true Circumstance; he is neither perjured, nor a Liar. And he adds, "This is very convenient to hide many Things;" But, the just Cause of making Use of such Ambiguities, is, as often as 'tis necessary or useful for the Defence of one's Person, Honour, or Estate. So, a Man

maintained and practised by the *Jesuits*, together with some *Casuits*, and *Schoolmen*. Examples of which are generally found in *Affertory Oaths*; because, according to *their Doctrine*, the chief Use

Man may lawfully say, he did *not* kill *Peter*, meaning *privately* another Man of *that Name*; or, that he did not do it, *before he was born*.

Any one, (says this honest *Abbe*,) may judge from *hence*, what the *Jesuits* would stick at, if the *Honour* or *Estate* of their *Society* were at Stake. But, the chief Point to be considered, is, how manifestly *this Doctrine* tends to make *Oaths* common, and to multiply the Occasions of Perjury. For, when once a Man may be allowed to swear, that, he has *not* done a Thing, tho' he *has* done it, by a *private Meaning* to himself that he did *not* do it *upon such a Day*; or, *before he was born*; who is there that will not play with an *Oath*? And, who will make a *Scruple* to perjure himself as often as it is for his Interest, tho' never so little? Now, continues this *Abbe*, it was to restrain *this Licence*, and to combat the *Doctrine* which authorizes, or rather teaches it, that Father *Quesnel* (a *Papist*) had wisely remarked in his Book of *moral Reflections*. (Prop. 101.) "That, there is nothing more opposite to the *Spirit of God*, and the *Doctrine of Jesus Christ*, than to render *Oaths* common in the Church; because, it is to multiply the Opportunities of *Perjury*, and lay *Snares* for the Weak and Ignorant; and that, it sometimes *prostitutes* the *Name of God* for promoting *ungodly Designs*. There could not be a better Representation of the *fatal Effects* of the *licentious Doctrine* of the *Jesuits*.

But, (says this *Abbe*), the *Jesuits* further Teach, "That, 'tis neither Perjury, nor any Sin whatsoever, to make Use of an *Equivocation* for a good Purpose. Which is another Assertion of Father *Fillicius*. (Tom. 2. Tr. 25. N. 323.) Fater *Stoz* says too, (in his Book intitled, *Le Tribunal de la Penitence*, L. 1. Part 3. P. 173. N. 220.), That, *he* who has committed a Crime in *Secret*, may deny it when examined about it, with a *private Meaning*, that he did not commit it *publicly*. "A guilty Man, says *he*, again, (*ibid.*), when examined by a Judge concerning a Crime which cannot be fully proved, unless he himself confesses it, may deny he has committed it, if, by confessing it, he should run the *Hazard* of his *Life, Liberty, or Estate*. In short, says *he*, in all these and the like Cases, if the Thing is so circumstanced, and Reason require it, a Person may confirm

Use of *such Equivocations*, 'is, when a Man, that is asked Questions by an *incompetent Judge*; or, not according to the *Course of Law*; or, having some *other reasonable Cause* to *dissemble* the Truth;

confirm what he says with an *Oath*; provided, it be accompanied with a *clever Equivocation*; because, *Lessus*, (another *Jesuit*,) has thus determined it.

I hope, (*says this French Abbe again*), This will open the Eyes of *Magistrates*, and that, with a just *Resentment* at a *Doctrine*, which teaches Men to sport with *Justice* both *human* and *divine*, and to violate the *sacred Obligation* of an *Oath*; and that, they will, at least, impose *Silence* on those *Teachers of Lies, Equivocation, and Perjury*. For, 'tis not to be imagined, that, the *Jesuits* of this *Day* are different from those of *Yesterday*. They understand one another to a *Miracle*, and, to be convinced, that, there never was a more perfect *Concert*, one need only hear what is said by *Father Casnedi* (*Tom. 5. Disp. 9. N. 316. p. 76. col. 1.*) a *Jesuit* of *Lisbon*, and *Qualificator* of the *Inquisitions* of *Spain* and *Portugal*, in a *Treatise* he lately published with the Title of, "*Crisis Theologica*, printed at *Lisbon* in 1719, with the *Approbation* of the *Divines* of the *Society*, and of *Father de Sousa*, *Provincial* of *Portugal*. Thus does this celebrated *Jesuit* express himself, and with him all the *Divines* of the *Society* who have approved it. "I say, that, the *guilty Person* when examined *Coram Judice*, as a *Malefactor* for a *Crime* by him committed, that is to say, in order to be punished, is not obliged, for fear of *Sin*, to confess his *Crime* frankly, if, by hiding it under some *mental Restriction* or *Phrase*, purely *material* or *equivocal*, he hopes to evade capital Punishment; or, what is as bad as Capital, such as the *Galleys*, or *great Infamy*, or *close Imprisonment*, or *forfeiture* of *Estate*, or the like *Pains* and *Penalties*, Equivalent to *Death*. Nay, he may even conceal his *Crime* by an *Oath*, whether, with a *mental Reservation*, or, in so many express Words.

Was ever any Thing, (*says the Abbe*), more explicit and positive? But, at the same Time, was there ever a greater *Profanation* of the sacredness of an *Oath*? A *Profanation*, which yet we find authorized and approve in 1719, by a *Provincial*, and *Divines* of the *Society*. To conclude: Such, then, is the *Doctrine* of the modern *Jesuits*. They, and their *Predecessors*, have gone Hand in Hand in forming

changes the *plain Sense* of the Words to a *Sense less plain* and evident, and very remote from the Matter in Hand, according as it shall seem expedient to carry on his own Purposes and Designs. As, if Lewis being asked, “*An esset Gallus*, “whether he were a *Frenchman*? Should swear, “*Se non esse Gallum*, scil. *Gallinaceum*, that he was not a *Dunghill-Cock*, (for, *Gallus*, in *Latin*, signifies both a *Frenchman* and a *Cock*): Or, as if a *Servant* being asked, “*Essetne herus intus*, Whether his Master were within? Should swear, “*non esse*, i. e. *non Comedere*, that is, that he was not eating: (For, the Word, *esse*, signifies both), (2) though at the same Time, the Intention of the Person that asks these Questions in both Cases should be sufficiently evident and clear. The same Thing may likewise happen in a *promissory Oath*; As, if a *General* should agree to make a Truce with his *Enemy* for ten Days; but, should plunder his Camp by “*Night*; because, there was no mention made of *Nights*, but of *Days* only,

an unanimous Tradition of *Equivocations* and *mental Restrictions*, which teaches Men to *perjure* themselves in an innocent Way, and to deceive the *Magistrates* in an *Article*, which the *Pagans* esteemed as the most religious and sacred. (v. *A Parallel of the Doctrine of the Pagans with that of the Jesuits*, Ch. 9.)

(2) Thus likewise, if a *Jesuit* were apprehended, he might swear, that he was, “*a Smith*, meaning, that his Name was “*Smith*. Or, if an *Apprentice* were commanded to tell where his Master was, he might, according to the Doctrine of the *Jesuits*, swear, that, he died a Month ago, meaning, that he then died *Stockings*.

at the *Time* of Agreement. *Livy* and others tell us a Story of *ten Romans*, that had been Prisoners with *Hannibal*, whom he suffer'd to depart his Camp, after they had taken their *Oaths* to return again upon certain Conditions. "One of whom, says he, (though (b) others affirm the Fact to have been done by two), (a) being by no Means a Man of a Roman Spirit, in order to elude the Force of his Oath, invents this Stratagem, namely, He returns the same Day again to the Enemy's Camp under Colour of having forgot something therein; and then, follows, and overtakes the rest of his Companions before Night. But, the tricking Cunning of this Man was deemed so Base, that, he was not only (c) despised and scorned by the *Vulgar*, and branded with all Marks of Infamy and Disgrace by the *Censors*; but, was also decreed by the *Senate* to be seized, and committed to the Custody of public Guards, in order to be carried back again to *Hannibal*. Yet, the *Jesuits* earnestly defend this Kind of *Equivocation*; infomuch, that *John Molan* Professor at *Lovain* defended the Murther of *John*

(a) Liv. 3. dec. 2.

(b) Aul. Gell. Noct. Attic. 18.

(b) *Acilius*, (as *Cicero* tells us, (L. 3. C. 34. de Off.) who wrote a History in Greek, says, that more of them returned under this Pretence to the Camp, hoping by such a Trick to get quit of their Oaths; and, that they were all of them branded with Shame and Dishonour by the *Censors*.

(c) Ut contempti vulgo dispretique sint. Aul. Gel. ubi supra. Emendante *Lipfio*, cum antè discripti perperam legeretur. V. Lips. 1. Elect. 7.

Huss, perpetrated contrary to the *Public Faith* engaged for his *Safe-Conduct*, for this very Reason, "That, he had, indeed, a *Licence* granted him to "come in *Safety*; but not, likewise, to "return in *Safety*." Let the *Jesuits* now go and confidently complain, that, a great Injury is done them, because, they are said to assert and teach, "That, (3) *Faith* is not to be kept with *Here-ticks*."

(3) *Heresy* is, by the *Learned*, defined to be "A voluntary Error in the Foundation of Religion, openly taught, and obstinately defended." This Notion of *Heresy* is, and must be agreed upon to be, just and true, both by the Church of *Rome* as well as by *Protestants*, and therefore, is unexceptionable. Now, that the *Guilt* of *Heresy*, according to this Notion, cannot be justly charged upon the Church of *England* by the Church of *Rome*, will clearly appear from the following Arguments.

First, If it cannot be proved, that, the Church of *England* doth receive, believe, or teach any other Doctrine than what hath been received, believed, and taught by the *Catholick Church*; nor broach any new Opinions, thereby to divide the Church for any secular Advantages to herself, nor obstinately defend any false Opinions.—Then, it must follow, that, she ought not to be charged with *Heresy*.

Secondly, If it cannot be made appear, that, the Church of *England* doth corrupt the Faith which was once delivered to the *Saints*, nor teach any Doctrine contrary thereunto, nor dissent from any known established Article thereof, nor obstinately maintain any such Dissent therefrom; then, it must follow, that, she ought not to be charged with *Heresy*.

Thirdly, If it cannot be made manifest by any Public Act or Record, owned as authentic by the Church of *England*, that, she hath renounced or forsaken that Faith into which she was baptized, and, of which she once made Profession; nor embraced any false and new Opinions which are contrary thereunto; nor doth obstinately believe and maintain any such new and false Opinions.—Then, it follows, that, she cannot be justly charged with the *Guilt* of *Heresy*.

Fourthly, If it can be proved, that, the Church of *England* either doth, or ever-did neglect and despise the Authority of the Holy *Catholick Church*; or, doth embrace and bold any wicked Opinions in despite

“ticks.” For, if *Faith* may be kept by such Means as this, there is no Reason, why they should be very solicitous, either about the Preservation, or Violation thereof, in any Business they

spight and Defiance of that Authority, or with a wilful and obstinate Mind, defend and maintain any such wicked Opinions.—Then, even by the Judgment of the Council of Trent in their Catechism ad Parochos, she ought not to be held Guilty of Heresy.

Fifthly, If there be not pregnant Proof, that, the Church of England hath embraced some Opinions which are contrary to, or, at least, not agreeable with, that Faith and common Christianity, which was taught by Christ and his Apostles; or, hath laid a new Foundation; that is, made something to be Religion and an Article of Faith, which really is not so, being not built upon the Foundation of the Apostles and Prophets; or, doth openly teach any fundamental Errors in Religion, thereby to seduce and withdraw People from fundamental Truth and Holiness; or, doth stubbornly maintain and defend a fundamental Error in Religion against repeated Admonitions and clear Convictions.—Then, can she not, (if this Notion of Heresy be true), be justly burthened with the Guilt thereof. Now, none of all these Things ever were, or can be made appear, or proved against the Church of England by the Church of Rome, notwithstanding all their Clamour; and therefore, she cannot be justly taxed or charged with the Guilt of Heresy. Nay,

That, it is impossible for the Church of Rome to make good her Charge of Heresy against the Church of England, will appear from this single Argument.

Since the Notion of Heresy here laid down is evidently that which is allowed by the Church of Rome, as well as by Protestants; it must, therefore, be the Standard, by which we are to be tried. Their Work, then, will be, to make it manifest, that, there are some Doctrines received, believed, and taught by the Church of England, which are Errors in the Foundation of Religion, and those obstinately defended and maintained by her. But, the only Way to know, what Doctrines are received, believed, and taught by any Church, or Society of Christians, is, to have recourse to the Public Acts and authentic Records of that Church or Society; and, that is no difficult Task.—For, ours are made public, and exposed to the View of all.—And, if they know not what we own as authentic Records, I shall here inform them.—First, The Holy Scripture is the Foundation of our Faith, and the Rule of our Religion. Secondly,

they happen to have to transact with any *Person* whatsoever. But, *this Piece of Jesuitism*, the Reverend Father in God *John Morton* Bishop of *Durham*, *Henry Mason*, and several others of our
Country-

The *thirty-nine Articles* agreed upon, by the *Arch-Bishops* and *Bishops* of both *Provinces*, and the *whole Clergy*, in the *Convocation* holden at *London* in the Year 1562, which are partly *positive*, and partly *negative*.—Where they declare the *Faith* and *Religion* of the *Church of England*, they are *positive*; and, where they reject the *Additions*, *Alterations*, and *Innovations* of the *Church of Rome*, they may be termed "*negative*." And, *Thirdly*, The *Book of Homilies*, wherein the *Doctrine* of our *Church*, *briefly* declared in the *Articles*, are *more largely* explained. *These* are the *public Acts* and *authentic Records*, wherein the *Doctrines* of the *Church of England* are to be found.—For, she *publicly* declares in her 6th *Article*, "That, all
" Things necessary to *Salvation* are contained in the *Holy Scriptures*,
" and that, whatsoever is *not* read therein, nor may be proved
" thereby, is *not* to be required of any *Man*, that it should be be-
" lieved as an *Article of the Faith*, or be thought *requisite* or neces-
" sary to *Salvation*. She also declares (*Art. 3.*) That, the *Three Creeds*, the *Nicene Creed*, *Athanasius's Creed*, and that which is commonly called, "*The Apostles Creed*," ought *thoroughly* to be received and believed.—For, they may be proved by *most certain Warrants* of *Holy Scripture*.—Unless, therefore, our *Adversaries* can find *Heresy* in the *Holy Scripture*, or, in the *Articles of Faith* summarily contained in the *Three ancient Creeds*, it will be impossible for them to find it in the *Church of England*; because, she doth *not* receive, believe, or teach any other *Doctrine*, but what is contained therein, or may be proved thereby. This is that *Faith* and *common Christianity*, which we received from *Christ* and his *Apostles*; and which we resolve, (by *God's Grace*), to hold fast. This is that which hath been *always held* and taught by the *one Holy Catholic and Apostolic Church*. This is the *Foundation* upon which our *Religion* is built, viz. upon the *Apostles* and *Prophets*, *Jesus Christ himself* being the chief *Corner-Stone*. And therefore, unless they can shake this *Foundation*; unless they will charge the *whole Church of God* with the *Guilt of Heresy*; all their Attempts and Batteries, levelled against us, will be *vain* and *fruitless*.—The *Church of England* will still stand, like a *Rock*, against which those *Waves* may break themselves, whilst she remains *unbroken* by them. (*Pref. against Popery*, Vol. I. fol. p. 176, &c.)

Thus

Countrymen, have copiously and solidly refuted in whole Volumes, published on this Subject, which, those who desire larger Treatises upon it, may consult. But, we shall, in the mean time, determine,

Thus you see, how impossible it is for our Adversaries to make good their Charge against the Church of England; and, if they cannot do it, we may safely conclude, they have not done it.—And, if they neither have, nor can do it; then, it is a foul Aspersions by them unjustly cast upon us.—And yet, nothing is more certain, than that they brand us with the odious Name of “ Hereticks, and in Consequence thereof, think themselves obliged, not to keep Faith with us, but to persecute, extirpate, and destroy us, whensoever it lies in their Power to do so with Impunity. This may clearly appear from the following Case.

John Hus, alias de Hassinetz, was so called from a City, or considerable Town of Bohemia, in the South Part of the Kingdom, in the Circle of Prabin, where he was born on the sixth Day of July 1373; it being the Custom of those Ages to name famous Men after the Place of their Birth. He was educated in the University of Prague where he went through all the Degrees of Honour, except that of Doctor. He was ordained a Priest in the Year 1400, and appointed Preacher at the Chapel of Bethlehem. He soon became famous for his Sermons, having espoused and propagated some of the Doctrines of Wickliff, and inveighed, without Mercy, against the Abuses of the Romish Church, and the Irregularities of the Pope, Cardinals, and Clergy; against their Ambition, Avarice, Tyranny, Incontinence, and Luxury. His great Zeal, joined to his Capacity, soon brought over to his Party the greatest, and also what was reckoned the most substantial Part of Bohemia, notwithstanding all the Opposition of the Clergy and Court of Rome. For this, among other Things, he was declared a Heretick by the Pope, and excommunicated without being heard. Upon which, he appealed to Jesus Christ, till the next Council should sit. When the Council of Constance sat, He was summoned to it, to which he readily went, being promised all Manner of Freedom and Security, the Emperor Sigismund having wrote to Wenceslaus King of Bohemia to send him thither, who gave him a Safe-Conduct; and the Emperor sent him another in a few Days after, in these Words,

“ Sigismund, by the Grace of God, King of the Romans, &c. To all Princes, as well ecclesiastical as secular, &c. and to all our

mine, “ That, *He* who swears in *that* Manner, not only *sins* by swearing *equivocally*; But is, notwithstanding *such tacit Equivocation*, in *Conscience* also bound to perform his *Promise* in the
 very

“ loving Subjects, Greeting. We affectionately recommend to all
 “ of you in general, and every one of you in particular, the honourable Master *John Hufs*, B. D. and A. M. the Bearer of these Presents, going from *Bobemia* to the Council of *Constance*; whom we have taken into our *Protection* and *Safe-Guard*, and into *that* of the *Empire*; desiring you, when he comes amongst you, to receive him well, and entertain him kindly, furnishing him with *all* Necessaries for his *Dispatch* and *Security*, whether he goes by Land or Water, without taking *any* Thing either from him or his, at coming in, or going out, for *any* Sort of Duties whatsoever; and to let him *freely* and *securely* pass, *sojourn*, *stop*, and *Repas*; and providing him, if need be, with *good Passports*, for the Honour and Respect of his Imperial Majesty. Granted at *Spire* the 18th of *October* 1414, the 33d of our Reign as King of *Hungary*, and in the 5th as King of the *Romans*. By Order of the King. And underneath, *Michael de Pacest*, Canon of *Breslaw*.”

Being furnished with *this Passport*, *John Hufs* arrived at the Council of *Constance*, where *Pope John* 23d made this *Protestation* to two of the *Bobemian* Noblemen that were his Convoy, viz. *John de Chlum* and *Henry de Latzenbock*, “ Even though *John Hufs* had killed
 “ my own Brother, I would make use of all my Power to prevent any
 “ Injustice from being done to him while he stays at *Constance*.”

Yet, notwithstanding the *Safe-Conducts* or *Passports* of the Emperor and the King of *Bobemia*, and the *Pope's Promise*, he was soon after arrested and thrown into a loathsome Prison; and, though the Emperor ordered him to be released; yet, the *Pope* and *Council* refused it; and appointed Commissioners to try him; He was at length condemned as an *Heretick*; publicly degraded; delivered over to the *secular Arm*; and, after the *Prelates* had recommended his Soul to all the *Devils*, was publicly burned at *Constance*, and his very *Ashes* scattered on the *Rhine*, lest his Followers should carry them into *Bobemia* for *Relicks*.

Soon after his Execution, in the 19th Session of *this Council of Constance*, the following Decree was made. A Decree, indeed, of great Importance; because, the Council therein declares itself upon
 the

very same Sense which the Words themselves import and yield, and are apt, without Constraint, to beget in the Minds of the Hearers. If he does otherwise, he is not free from the Guilt of Perjury.

4. I offered

the Validity of the Safe-Conducts granted to Hereticks by temporal Princes, in these Terms :

“ The present Synod declares, that, every Safe-Conduct granted by the Emperor, Kings, and other temporal Princes, to Hereticks, or Persons accused of Heresy, in Hopes of reclaiming them, ought not to be of any Prejudice to the Catholic Faith, or, to the Ecclesiastical Jurisdiction; nor, to hinder, but such Persons may and ought to be examined, judged, and punished, according as Justice shall require, if those Hereticks refuse to revoke their Errors, even though they should be arrived at the Place where they are to be judged only upon the Faith of the Safe-Conduct, without which they would not have come thither. And, the Person who shall have promised them Security, shall not, in this Case, be obliged to keep his Promise, by whatsoever Tye he may be engaged; because, he has done all that is in his Power to do.”

To this Decree 'tis necessary to add another, which relates to the Safe-Conduct of John Hus in particular. This Decree, which is not in the printed Acts, is to be seen in Manuscript in the Vienna Library. It runs thus, Word for Word.

“ Whereas there are certain Persons, either ill-disposed, or overwise beyond what they ought to be, who, in Secret and in Publick, traduce not only the Emperor, but the sacred Council; saying, or insinuating, that, the Safe-Conduct granted to John Hus an Arch-Heretick, of damnable Memory, was basely violated, contrary to all the Rules of Honour and Justice; though the said John Hus, by obstinately attacking the Catholic Faith in the Manner he did, rendered himself unworthy of any manner of Safe-Conduct and Privilege; and, “ though according to the natural, divine, and human Laws, no Faith or Promise ought to have been kept with him, to the Prejudice of the Catholic Faith: The Sacred Synod declares by these Presents, that, the said Emperor did, with regard to John Hus, what he might and ought to have done, notwithstanding his Safe-Conduct; and forbids all the Faithful in general, and every one of them in particular, of what Dignity, Degree, Pre-eminence, Condition, State, or Sex they may be, to

4. I offered *some Reasons* in Proof of *this Assertion lately*, when I established and confirmed my *First Hypothesis*. I shall now beg leave to add *some others*, but very briefly. And, the
First

“ speak Evil, in any Manner, either of the *Council*, or of the *King*,
 “ as to what passed with regard to *John Huss*, on Pain of being
 “ *punished without Remission*, as *Favourers of Heresy*, and Persons
 “ *guilty of High-Treason*.”

Many Remarks might be made upon these *two Decrees*, if one were to examine them, either as a *Civilian*, or a *Casuit*. But, to descant upon them *historically*, they seem to have come a Day too late. The Emperor's *Safe-Conduct* was not violated so much by the *Execution* of *John Huss*, as by his *Imprisonment*. For, if, after an *Examination*, according to *due* Course of Law, the Council had found *John Huss* an *Heretick*, they were in the Right, according to the Usage of those Times, to sentence him to the Flames, and to deliver him over to the *secular Arm*. But, to *imprison* him *before* they had examined him; and, even after he had declared, that he *would submit* to the *Council*, and that he was ready to *retract* as soon as he should be convicted of *Heresy*, was a *notorious Infraction* of the *Public Faith*. The Council, therefore, ought to have declared at *first*, as they do *now*, that, the *Ecclesiastical Jurisdiction* being *above* the *Civil Jurisdiction*, the *Safe-Conduct* of a *temporal Prince* does not hinder an *Ecclesiastical Tribunal* from disposing of the Person of a *Heretick*, or one suspected of *Heresy*, in the Manner they think fit. But, *this Decree* did not appear *then*. They only gave the Emperor to understand, in *private Conferences*, that, *his Safe-Conduct* did not bind him to any Thing; and, that he was *actually* in the *Wrong* to grant it; as the Emperor *himself* explained it in *full Council*. Probably they waited for the Opportunity of *his Absence* to put the Affront upon him of *publicly* declaring, “ That, *his Safe-Conduct* “ was *void*.” What the *other Decree* imports, *viz.* That, *John Huss* had rendered himself *unworthy* of any *Safe-Conduct*, because, he *obstinately* opposed the *Catholick Faith*, is a very *bad Reason*. For, the Council could not judge *John Huss* to be an *obstinate Heretick*, 'till he *refused* to *recant*, after his *Examination*; and 'till *then*, he was *worthy* of a *Safe-Conduct*. So that, the *Excuse* of the Council is *absolutely null*, at least with Regard to the *Imprisonment*. Moreover, what the Decree says, *viz.* That, according to the *Laws natural, divine, and human*, “ *no Faith ought to have been kept with*
 “ *John*

First I shall assign, is, because, an Oath ought to be understood with the greatest Simplicity, as well as with Effect, which is the Scope and Sum of that Hypothesis. But, that Artifice of an industriously-devised and laboured Ambiguity is directly repugnant to such Simplicity. Secondly, because, it is a great Prophanation of the Name of God, to invoke him as the Inspector and Witness

"John Hufs, to the Prejudice of the Orthodox Faith," is of a very general Consequence. For, unless it can be proved, that, the Case of John Hufs was different from that of all other Hereticks, it follows clearly from thence, "That, no Faith or Promise ought to be kept with any Heretick whatsoever." Therefore, they ought not to be so much cried out against, who have advanced, that, the Church of Rome teaches, "That, Faith ought not to be kept with Hereticks;" Because, if they have not taught it in so many Words, they teach it, however, by a clear and necessary Consequence. But, they who have inveighed against this Accusation, as a Calumny, had not, in all likelihood, seen the latter Decree, which relates to the Safe-Conduct of John Hufs in particular. I doubt not, but it had been seen by the Protestants of France and Germany at the Time of the Council of Trent. Catherine de Medicis said openly to the Cardinal of Ferrara, Legate in France, that, the Protestants, before they came to the Council, demanded the Abolition of the Decree of the Council of Constance, which says, "That, the Ecclesiastical Judges may proceed against Hereticks, who come under the Safe-Conduct of temporal Princes." This may, indeed, relate only to the general Decree; but, the following Circumstance makes it appear to relate to the particular Decree; namely, that, the Elector of Saxony's Orator declared in the same Council of Trent, that, the Protestant Divines of Germany were not yet come to the Council, because of a certain Declaration of the Council of Constance, which says, "That, Faith ought not to be kept with Hereticks, nor Persons suspected of Heresy, though they are furnished with Safe-Conducts from the Emperor and Kings." And John Cochlaeus, (a Papist), could not but be of Opinion, that, this was the Sentiment of the Council of Constance; because, he says expressly in his History of the Hussites, that, when the Emperor was for setting John Hufs at Liberty, the Fathers represented to him, "That, Faith was not to be kept with Hereticks. (Vid. Lensan's History of the Council of Constance, Vol. I.)

of the Heart, and to bear *Testimony* to the *Truth* of those Words, which agree *not* with *that*, which the *Swearer* reserves concealed and hid in the *Deep* of his *own* Breast. For, what is *this*, but, as much as lies in *his* Power, to make *that* God, who *cannot* deceive, nor be deceived, an *Impostor* and a *Patron* of such base Hypocrisy and Deceit? *Thirdly*, because, such *Equivocation* is repugnant to the very *Institution*, *Design*, and *Nature* of an *Oath*; the principal *Use* of which, is, to (*d*) put an *End* to *Controversies* and *Strifes*; that so, concerning *Things* otherwise *uncertain*, such *Certainty* as is *expedient* in human *Affairs* may be obtained; "The religious *Tye* of an *Oath* being the (*e*) chief *Remedy* for *expediting* and *ending* *Contentions* and *Debates*." But, by *Equivocation*, all that *Certainty* is *destroyed* and *taken away*, which is *desired* and *sought for* from an *Oath*. For, what *Certainty* can there be in that *Answer*, the *Sense* and *Meaning* of which is *doubtful* and *uncertain*? Nor, are *Controversies* *expedited* by this *Method*: No; they are *increased* the more. *Fourthly*, because, *He* that swears in this *Manner* *deceives* his *Neighbour*; nay, and even *knowingly* *deceives* him; contrary to what is required of the *Swearer* in the 24th *Psal*m; namely, that, he should not (*f*) *swear deceitfully*; and, contrary to *that* *Form* of the

(*d*) Heb. vi. 16.

(*e*) L. 1. ff. de jurejur.

(*f*) Psal. xxiv. 3.

*Ancients, "If I knowingly deceive, may the Gods destroy me." Fifthly, Because, as an Affirmation and a Negation in an Assertory; so, a Spon-
sion in a Promissory Oath, inasmuch as it contains in it an Answer to a Question proposed by the Person that tenders it, unless it should be suitable and adapted to the Question proposed, is a Lye, and not Truth. For, one Proposition arises, as it were, both out of the Question and the Answer; which must certainly be deemed false, if the Answer should be made in a Sense different from that, wherein the Question is proposed. Nor, will that Restriction or Qualification generally used by the Patrons of such Deceit, do them much Service in this Matter; namely, "That, it is not lawful for us ordinarily and universally to make Use of Equivocations; No; but only before a Man who is not a competent or proper Judge; or, before one that has no Right to demand an Oath from us; or, before one, who, without a just Cause, would compel us to swear; or, who requires something from us that is not due; or, for some other reasonable Cause of a similar Nature. But, to omit, that, all this, is, in the first Place, a bare Allegation only, without any Proof or Authority, either from the sacred Scripture, or primitive Church; or, even without one solid and clear Reason to support it; And, to omit, secondly, that, the Force of the Arguments which we have already produced to the*
Contrary,

Contrary, is so far from being destroyed or taken away, that, it is not so much as diminished or weakened by that *Restriction*; we must know, in the *third Place*, that, notwithstanding it should be granted, that, *unjust Force* may possibly impede that *Obligation* which is contracted with regard to *Man*; because, it is not Just, that any *Man* should acquire to himself a *Right* by a *wrongful* or *unjust Act*; yet, no *Injury* done us by *Men* can possibly afford us a *just Cause* of doing an *Injury* to *God*; namely, by taking away the *Obligation* which is contracted with regard to *him* as the *Inspector of Hearts*, to whom a *Right* accrues by every *Oath* we take, on Account of the *Invocation* of his *Divine Name*. *Fourthly*, and *lastly*, *This Doctrine* of the *Jesuits* licences wicked *Men* to *lye* and *perjure* themselves, according to their *own Lust* and *Pleasure*, even, notwithstanding that *Restriction*; because, though it should be allowed to remain in *Force*; yet still, the *whole Power* of judging, whether it would be expedient, or not expedient to make use of such *Equivocations*, is lodged in the *Breast* of the *Swearer* only. Therefore, should any *Man* be *wrongfully* and *unjustly* compelled to take an *Oath*, he ought, either simply to refuse it; or else, to take it without any *Deceit* or *Equivocation*, in the very same *Sense*, in which it is proposed to him.

5. The *Third Case*, much of the *same Nature* with the The FORTY-FOURTH CASE.
Preceding, is, concerning what is called “*a mental Reservation*; which the *Je-
 suits* maintain in the *very same Manner*, and de-
 fine under the *same Restriction*, that they do a
verbal Equivocation. For, as in *that*, the Swearer
eludes and *deceives* the Person that asks him
 Questions by *wresting* the Words spoken to a
foreign Sense; so, in *this*, he does the *same*, by
 taking in, and *using some Piece of a Sentence*, or
some Words not pronounced *externally*, but *in-
 wardly* reserved in his own Mind. Thus, say
 they, should a *Romish Priest* be asked by an *he-
 retical Magistrate*, whether, *He* were a *Priest*,
 or not? He might answer, that, *He* was not a
Priest, that is to say, of *Bacchus*, or *Apollo*:
 Or, should an *adulterous Wife* be accused of *A-
 dultery* by her jealous Husband; she might swear,
 that, *she* did not commit *Adultery*, “*to the End*
that he might tell it.” So likewise, in a
promissory Oath, they hold, a Traveller may swear,
 in order to ransom or save his Life, that, he will
 give a Robber a certain Sum of Money, though,
 at the *same Time*, he does not intend to give him
any, provided he reserves some *such* additional
 Clauses as *these* in his own Mind, “*I will*
give it, If I owe it; or, *I will give it, if I*
be sued for it before the Magistrate.” But,
 as *this Doctrine of mental Reservations* is built
 almost

almost upon the *same* Foundation with *verbal Equivocations*; so, is it also *overturned* and *confuted* by the *very same* Arguments. For, it *banishes* and *destroys* all *Faith* and *certainty* from amongst the Children of Men; it makes *God* an *Impostor*; it *deceives* all we *deal with*; it *destroys* the *very End* and *Use* of an *Oath*; and, opens a *wide Door* to all *Kinds of Lies* and *Perjuries*. And, indeed, *such Reservation* is by *so much* the *more* pernicious than an *Equivocation*, by *how much* the *more* difficult it is to guard against and prevent the *former* than the *latter*. For, an *Equivocation*, that is either *foreseen* or *suspected*, may be *guarded against*, by explaining the Words in which we are to swear, in *such* Manner as that *no Ambiguity* may remain *couched* under them, nor *any Loop-Hole* left for an *Evasion*. But, you can, by *no Act*, by *no Foresight* whatsoever, *prevent* or *hinder* that Man from making use of *such Reservations* who thinks them *lawful*. For, in *what Bonds*, can you possibly hold *this Vertumnus*, who *so frequently* changes Shapes, *so as not* to suffer him to escape?

(g) Invent a thousand Chains to bind him fast,
This wicked *Proteus* will escape at last.

(g) Hor. L. 2. Sat. 3.

The

The *Oath of Allegiance* among us is penned, from the *Beginning* to the *End*, in such accurate and well-chosen Words, that, no Room seems to be left for the least (4) *Cavil* or *Evasion*; yet, the

(4) It ought to be well considered, that, *Allegiance* is a *Duty* which every *Subject*, under what Form of Government soever, by the *Law of Nature*, oweth to his *Country*, and consequently, to the *Sovereign Power* thereof. For, the very same *Law*, (which we may call the *Law of Nature*, at least in a large Acceptation), which inclineth particular Men to form themselves into one civil Body of a Common-wealth, must necessarily withal imprint a *Sense* and a tacit Acknowledgment of such a *Duty of Allegiance* in every inferior Member of the Body to the *sovereign Power*, by which that Common-wealth is governed, as is necessary for the *Preservation* of the whole Body. So, that, the *Bond of Allegiance* doth not arise originally from the *Oath of Allegiance*, as if those that had not taken the *Oath* had a greater Liberty to Act contrary to the *Allegiance* specified in the *Oath*, than those that have taken it, have: Or, as if, in Case the *Oath* should be quite laid aside, there should be no *Allegiance* due to such *sovereign Power*: But, it is so intrinsic, proper, and essential a *Duty*, and, (as it were), so fundamental to the *Relation* of a *Subject*, as such, that, the very *Nature* of a *Subject* doth, after a Sort, import or imply it; insomuch, that it hath thereupon gained, in common Usage of Speech, the Stile of “*natural Allegiance*. And therefore the *Bond of Allegiance*, (whether sworn, or not sworn), is, in the very *Nature* of it, perpetual and indispensable. And if so, then, no *Subject*, that either hath, by taking the *Oaths of Supremacy* or *Allegiance* acknowledged; or that, not having taken either of said *Oaths*; yet otherwise knoweth or believeth, that, the *sovereign Power*, in these Kingdoms, to whom his *natural Allegiance* is due, is, “the *King*, his *Heirs*, and lawful *Succeffors*, can, without sinning against his *Conscience*, enter into any *Covenant*, *Promise*, or *Engagement*, or do any other Act or Acts whatsoever; whereby either to transfer his *Allegiance* to any other *Party* to whom it is not of Right due; or, to put himself into an *Incapacity* of performing the *Duties* of his bounden *Allegiance* to his lawful *Sovereign*, when it may appear to be useful and serviceable to him. And, if so, then from hence it must evidently follow, first, That the *Jesuits* and all those of these Kingdoms, who swear *Allegiance* to, or enter

the *Jesuits* and *Priests*, by reserving to themselves the *Liberty* of *mental Reservations*, dare take it with the *utmost Effrontery*. For, they understand that very *Clause* wherein they promise,

enter into *Compacts* or *Engagements* with, the *Pope*, or any other *foreign State* or *Potentate* in *Opposition* to; or, without the *Permission* of, their *lawful Sovereign*, violate the *Bond* of their *natural Allegiance*, and ought to be deemed no other than *Enemies* to their *King* and *Country*. Nor, is it less evident, that, those *Positions* of the *Jesuits*, which assert, "That, *God's Priests* may teach the *People*, that "they owe no *Subjection* to *wicked*, or *heretical Princes*; and that "tho' they have sworn *Allegiance* to them, yet, that they "owe them no *Fidelity*. Nor, that those shall not be accounted *perjured*, that *devise* against an *heretical King*; yea, that he who "obeys him shall be deemed *excommunicated*; and, that He who "acts against such *King* shall be *absolved* from the *guilt* of *Wrong* "and *Perjury*," are not only *novel* and *erroneous Positions*; but also *impious*, *traiterous*, and *rebellious*; and consequently, ought to be *detested* and *abhorred* by all *good Subjects* and *good Christians*. For, such *Positions* not only throw an *open* and *express Contempt* upon *common Reason*, but also upon the *sacred Word* of *God*. Hence, an honest *Papist* of *France*, (*Father Quesnel*, in his *Book of moral Reflections*,) upon these *Words* of *Christ*, "Render therefore unto *Cæsar* the *Things* "that are *Cæsar's*," says, "That, no *Reason*, no *Conjuncture*, no "human *Power* can dispense with *Subjects Loyalty* to their *Princes*, "because, it is the *Ordinance* of *Jesus Christ*." "Jesus, (says he, in another *Place* on these *Words* of *St. John*, "My *Kingdom* is not of "this *World*;) *Jesus* teacheth us to observe a *Modesty* and *Respect* towards *Magistrates* and the *Powers* of the *Earth*, even tho' they should not do their *Duty*. The *Kingdom* of *Jesus Christ* is not of this *World*, nor does he any where *intrench* upon the *Government* of the *Kings* of the *Earth*. And, upon these *Words* of *St. Paul*, "Let "every *Soul* be *subject* to the *higher Powers*," This is the *Lecture* which the same *Jansenist* reads to the *Jesuits* and *Popes*; but a *Lecture*, which neither the one nor the other can hear with *Patience* "This, (says he), is a *Doctrine apostolic* and *divine* of the *lawful Power* of *Kings* and other *sovereign Princes* over *rebellious Clergymen*, who, on *Pretence* of *Religion*, violate *Religion itself*, by shaking off an *Authority* which comes from *God*. And then adds, the *principal*
Duty

mise, in a *set Form* of Words, *faithfully* to observe *all* that has been *before* repeated, pursuant to the *Tenor* of the Words spoken, “ *and according to the plain and natural Sense and true Meaning*

Duty of Subjects, is, to own the *Sovereignty* of *Princes*, and their *Authority* in their *Officers* and *Magistrates*, and the *Obedience* which is *due* to them. They are both of *divine Right*. And, *this* extends, according to *St. Paul*, to *all Mankind* without Exception, that is, as *St. Chrysostom* explains it, “ It extends to *Apostles*, *Evangelists*, “ *Prophets*, *Bishops* (of *Rome*, as well as *others*), to *Priests*, *Monks*, “ *Friars*, and by *Consequence*, to the *begging Friars* of the *Society* “ of *Jesus*, who ought to be *subject*, not only for *Wrath*, but also “ for *Conscience-sake*. And, says he, the *Apostle* adds the *Quality* of “ *Higher* to that of *Powers*, because *Kings* have none above them in “ *Temporals*, but *God alone*. *God* is the *first Majesty*, a *King* the “ *Second*. His *Crown* is independent of every created *Power*. “ And then adds, “ Let me ask you, O ye *Princes* of *this World*, “ what would become of you, if *all* your *Subjects* were *Jesuits*? “ O strange unaccountable *Society*, which is *neither Christian* nor “ *Pagan*, for *what Fate* are ye therefore allotted?” (*Parallel of the Doctrine of the Pagans and Jesuits.*)

Now, if *these* be the *Principles* of the *Jesuits*, what *one Argument* can be offered, why *Persons* of so *impious* and *dangerous Opinions*; why, *such Promoters* of *Faction*, *Sedition*, and *Rebellion*, should be *connived at*, or treated with *Lenity*, in any *Protestant State* or *Kingdom*? I would not be understood to Mean, that, *any Persons* ought to be persecuted merely on the *Score* of *religious Principles*. No, the *Church of England* teaches *no* such *Doctrine*, as has been before observed in the *Course* of these *Notes*. But, why *bad Subjects*; why, *Men* who *hold*, *vent*, and *propagate Principles* contrary to the *Laws*, *Safety*, and *good* of *any Society* or *Kingdom*, and carry them into *Execution* whenever an *Opportunity* offers, should not be restrained or punished in *Proportion* to their *Demerits*, I can see *no Reason*.—Does the *French King*, or any other *popish Prince* in *Europe*, openly tolerate at *this Day* any *Protestants* in their *respective Kingdoms*, tho’ they venture not to *propagate Notions* destructive of their *Governments*? On the *contrary*, do they not often, even upon *bare Suspicions*, destroy, or commit *Numbers* to the *Bastile* or *Inquisition*, from whence we never hear of their *Return*,
or

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Meaning of them, without any Equivocation, or mental Reservation whatsoever; yet, I say, at the same Time that they swear thus, they understand this very Clause with another Reservation, namely this, "that I shall tell you of.

6. Yet,

or, force them into Banishment. It was cast as a *Reproach* by the old Romans on the Athenians, "That, *they shewed their Wisdom in making good Laws, but their Folly in neglecting to observe and execute them.*" And, it was a *just* Reproach, no Doubt, (says Dr. Burnet in his *Treatise on Government*); "For, it were every Whitt as well to have no Laws at all, as not to have them executed and observed.— But, *this is the Province of the Legislature.*

Secondly, from the same Principles it follows, that, the Non-jurors, who, tho' born and bred among us, and enjoying all the common Rights of the Community, yet refuse to take the Oaths to the Government, those Tests required by the Laws to be taken by every Subject, and who refuse even to Pray for the Powers that be, tho' ordained of God; but schismatically separate from the Church, as by Law established into private Conventicles, where, 'tis much to be suspected, they pray for a popish Pretender to the Crown of these Realms, and would, if occasion offered, promote his Interest and Service therein, are highly to be reprov'd and condemned.

If, indeed, those who refused to take these Oaths to King William and Queen Mary after the Revolution, because, they had taken the same Oaths before to King James the Second, acted upon real Principles of Conscience, and out of Fear of incurring the Guilt of Perjury, I think, however mistaken they might have been, they might, with some Reason, have pleaded an Excuse. But, to consecrate Non-juring Bishops, and continue a Succession of them in order to keep up a Party among us to disturb the Peace of these Kingdoms, to raise Rebellion, or, to abett it; a Party, who own no supreme Governor but a foreign popish one, tho' they pretend to be Protestants themselves, and whose Interest they have in Fact, upon all Occasions espoused.—I say, these are Men that Act so directly contrary to the Laws of the Land, as well as to all Reason and Religion, that, I know of no one good Argument that can be urged, why they should not be looked upon as dangerous Enemies both to the ecclesiastical and civil Government of these Kingdoms; and consequently,
ought

6, Yet, in order to avoid the *Imputation of Perjury*, they are ready to urge *this* in their own *Defence*, namely, "That, one entire compounded Sentence is made up of verbal and mental Terms, in

ought to be treated with the utmost Severity, that our *Laws* prescribe, or our *Religion* allows.

And, to add no more on this Point, from the same Principles it also follows, that, those are not only to be reprov'd, but treated with the greatest Severity, who, having taken Oaths of Fidelity and Obedience to the civil Powers set over them; yet, upon every, or any Occasion, are so Weak or Wicked as to be seduced from their Allegiance, and drawn, under some Colour or other, to join with Papists, in Tumults, Insurrections, and Rebellions. Are not such openly and glaringly Guilty of the heinous Sin of Perjury? Yea, do not such betray our Lives, Liberties, and Properties; not to mention our Religion, to our greatest Enemies? That, there have been such weak, or wicked Protestants, both History and Experience put out of Question. How many Protestants were seduced in Ireland to join with Papists in the Grand Rebellion of 1641, wherein 150,000 of their Brethren were murdered in cold Blood? How many seeming Protestants joined King James the Second, who, tho' some of them have continued Protestants, yet, have, upon every Occasion, since, endeavoured to serve the Interest of Popery? Nay, how many Protestants joined with a popish Pretender to the Crown of these Kingdoms, in the late execrable Rebellion in Scotland?

Ought not, therefore, every Protestant, as he values and regards the present Enjoyment of his Liberty, Property, and Religion, and the Continuance of them to his Posterity, to be firmly attached, both in his Principles and Practice, to his present most gracious Majesty, and yield him that Service and Obedience, which the Laws of the Land, and his own Duty require from him? Ought he not to do all in his Power, consistently with his own Principles, to prevent the Growth of Popery, and to baffle all it's deadly Designs, in these Kingdoms? To do these, is, what every one should assist in, by all legal Means, who has any Estate to lose; any Conscience to be distressed; any Posterity to be tender of; or, any love to the best of Protestant Kings, or, to his Country. Can we, consistently with Self-preservation, join with, or abett those, who avow the Extirpation of all who differ from them in Religion? Can we confide in Men, who are sworn

in which, if taken *all together*, there can be no Falsity nor Deceit. For Example, "Should a Priest swear in *express Words*, "*That, he is not a Priest*, reserving *this Addition* at the *same Time* in his *own Mind*, but *not expressing it*, namely, "*That I shall tell you of: This whole Sentence*, say *they*, being a *verbal and mental Composition*, if taken *altogether*, will be *true* thus, "*I am not a Priest that I shall tell you of*. Nor, does there *any Reason* appear to the contrary, why it should *not* be free for every Man to compose his Discourse, if he pleases, both of *vocal and mental Terms*. For, why should *this Manner of speaking in Prayer*, namely, suppose a Man should *only speak these Words Aloud*, "*Our daily Bread*, and think of the rest, "*Give us this Day*, in his *own Mind only*, be looked upon to be an *entire Sentence*, and not only a *lawful Petition*, but *acceptable to God*; and, why should it *not* be lawful to do the *very same Thing* in an *Oath*? Now, in order to give a *full Answer* to *this Subtilty* of the *Jesuits*, it is, in the *first Place*, greatly to be wondered at, that, *those* very

sworn to a foreign Jurisdiction? Men, whose *Principles and Practices* will not permit us to imagine, *they* can give a *legal Security* to the *Government*, either as it is *Protestant*, or as it is *settled* upon the *glorious Principles* of the *late happy Revolution*? Men, who, if they do *swear* to the *Government*, are furnished with so many *Evasions*, *Equivocations* before-hand, or *Absolutions* afterwards, that, there is scarcely *any Hold* to be taken of them, nor *any Dependence* on *their renouncing their bloody and destructive Doctrines*.

every acute *Artists* at Disputation, should not consider, that, by this Defence, all Faith and Assurance are weakened and quite destroyed in all Courts of Justice, in all Promises, and human Contracts. For, the same Argument which they use, if it were of any Weight, would Evince it to be no less Lawful to make use of such Reservations before a lawful Judge, and in a just or due Matter, (which yet, they themselves affirm to be unlawful to be done), than before an incompetent Judge, and in an unjust or undue Matter; because, a Sentence composed of Words and mental Reservations is always, and in either Case, equally True, or equally False. And, this Answer is sufficient, *ad hominem*, or with Respect to these particular Men. But, as to the Matter itself, we must affirm, Secondly, That, a Sentence composed of Words and mental Reservations, in the Manner mentioned, may be admitted, when a Man muses upon something with himself alone, as, in private Meditation; or, when a Matter is transacted only betwixt God and himself, as, in Prayer, or Thanksgiving; but, when he is to transact or deal with Men, as in Oaths, where Testimony must be borne in such Manner as to be heard and understood by others; there, a Sentence mixed with, or made up of, Words and mental Reservations, ought, by no Means, to be admitted. The Reason of this Difference is evident and clear; because, every Man knows what

he carries *concealed* in his own Breast, as well as what he *openly* expresses in Words: And, as to God, there is nothing hid from him; no, the most secret *Recesses* of our Hearts are (b) *naked and open* to his View. So that, as to Persons that meditate with themselves, or that pray to God, it is the *same Thing*, with Regard to the Nature of Truth or Falsehood, whether they express all the Thoughts of their Minds, or Part only, or none at all. But, among Men, who must necessarily be ignorant of the Thoughts of other's Hearts, unless signified or made known to them by Speech, or some other external Sign, the Truth and Falsity of a Sentence must be estimated or judged of by those Things alone, which can testify or declare something to the Auditors. But, since those Reservations which lie concealed in the Minds of Men cannot do this; it follows, that, in order to judge rightly concerning the Truth of a Sentence or Discourse, we must Regard express or openly pronounced Words only, but, by no Means, take any Notice of mental Reservations.

7. The fourth Case relates to the *After-act*. For, as before an Oath is taken, as well as in the very Act itself of swearing, there ought to be a Design of fulfilling the Promise in the same Sense in which it is proposed,

(b) Heb. iv. 13.

without any *Equivocation*, or *mental Reservation*; so, after the *Oath* is taken; there ought to be a *strong Desire*, as well as *diligent Endeavour*, faithfully to fulfill it in *due Time*, and in the very *same Sense*, too in which it is sworn, without any *Evasion* or *Artifice* to avoid the *Performance* of it. For, as it is one Kind of *Perjury* to wrest or strain the Words at the Time of swearing to a Sense different from what the Auditors conceive and apprehend; so, it is another Kind of *Perjury*, where an *Oath* is rightly taken, not to Act afterwards with *Sincerity*; but, by inventing some new Device, (yet still preserving the Words), to evade and elude the Force thereof. Thus, says Tacitus, (i) "Those who are conscious to themselves of Villainy, make it their Business artfully to wrest or change the Words of an Oath, in order to cloak their Guilt." (k) Stobæus recites a pleasant Story, out of Herodotus, of one Archetimus, who had deposited some Gold in the Hands of a Friend of his called, "Cydias. After some Time, when Archetimus demanded the Gold to be restored again, which he had so deposited; Cydias, out of Covetousness, denies that he had ever received it. The Matter was brought before the Judges. The Plaintiff urges his Case, and persists in it; the Defendant absolutely denies it. Both of them are

(i) Tacit. 4. Histor.

(k) Stob. Serm. 27.

equally Confident, but *neither* of them could produce *any* Witnesses. The Judges, therefore, were pleased, because there was *no other* Proof, to determine *this* Contest by an Oath. A Day is appointed for the Trial. Cydias, in the mean Time, inclosed the Money in a Staff nicely hollowed or bored for the Purpose, and withal, counterfeits Sickness. On the Day appointed he appears with the Staff in his Hand, as if he had *not* as yet, been well recovered of his late Disorder: And, upon his approaching the Altar, reaches the Staff to Archetymus, desiring him to hold it, 'till he should perform the Solemnities of the Oath. Having delivered him the Staff, he then, with a most composed Mind and Countenance takes his Oath, and owns, indeed, that, he had received the Gold from Archetymus, but boldly asserts, that he had again restored it. Archetymus, struck with the Loss, and enraged at the Fellow's unparallel'd *Perfidiousness*, joined with so much Impudence, threw away the Staff, and struck it with *such* Violence against the Pavement, that he dashed it all to Pieces; upon which, out flies the Money, which at once disclosed both the *Fraud* of Cydias, and the *Truth* of the whole Matter. This Fact of Cydias, the Historian calls "a Lye artfully devised and forged, and observes also, " That, he came to a miserable End, as a just Reward of his *Perfidiousness*. We have many Examples of the same Nature in History,

story, and every Day in common Life; from whence I collect these few Observations, which may be of some Use to us. First, that, even wicked Men are touched and influenced, at least, in some Degree, by the Religion and Conscience of an Oath; insomuch, that, those who have little or no Regard to Justice or Honesty; do yet, by a certain natural Sense, or instinct of Nature, think themselves bound to perform any Promise they have made and confirmed by an Oath. Secondly, that, unless we resolutely resist our depraved Affections, we are in Danger of having that Spark of natural Light which still remains in us, either entirely extinguished; or, at least, so miserably overwhelmed, that, we shall be more solicitous to palliate and disguise our Perjury by some Artifice or other, than sincerely to avoid it. Thirdly, That, whoever desires to be entirely free from Perjury ought diligently to weigh and consider every Word of the Oath which he is about to take, together with the Sense and Force thereof, to the End, that, if it ought not to be kept, it should not be taken; but, if it should appear lawful to be taken; that then, it may be observed and performed without Fraud or Dissimulation. For, it is an impious Thing, over-hastily, as it were, to devour or swallow down a Thing that is sacred; and a Thing very unseasonable, when a Promise is once made, to begin an Inquisition about it. And, this may suffice to be said, con-

cerning the *first* Doubt. The *Sum* of which is this, "That, where the *Words* of an *Oath* are "in themselves so clear, that, there can be no "Doubt betwixt honest Men concerning the *Sense* "or *Meaning* of them; there, the *Swearer* is "bound to perform it in the same *Sense* which the "Words manifestly import and bear; nor, can "he lawfully, either at the *Time* of taking such "Oath, or after, by any Interpretation devised "or found out for his own Advantage, wrest or "strain them to any other *Sense*."

THE FORTY-SIXTH
CASE.

8. The *second* Doubt, is, where a Question arises concerning the *Sense* of the *Words* of an *Oath*; where, three Cases occur. The *first* is, concerning spontaneous *Oaths*, as, in those *Promises* that take their Rise from the mere *Motion* of a Man's own *Will*, and proceed from a certain *Liberty* of the *Mind*; and not from any *Debt* of *Justice*, or of obsequiousness or *Respect*. To which it is ordinarily and truly answered, that, such *Oaths* are to be understood according to the *Intent* and *Meaning* of the *Party* swearing; because, every Man is the best *Interpreter* of himself. For Example, should any Man among us bind himself by a *Vow*, an *Oath*, or a *Promise*, to give to some *Hospital*, or to the *Poor* of some *Village*, the *Sum* of ten *Shillings* every *Month*: Now, in *Regard*, the *Word*, "*Month*", is of doubtful Signification among us; should the *Poor* of
of

of those Places *insist*, that, the *first* Pension became *due* to them by *such* Promise on the 28th Day of *January*; and ought from *thence* forward to be paid them on the 28th Day of *every other* Month also, taking the Word, *Month*, for the Space of *four Weeks*, which is *one* Signification of *that* Word; but *He*, on the *contrary*, should assert, that, it did *not* become *due* before the *last* Day of *January*, and so *forwards*, taking the Word, "*Month*", generally, for the 12th Part of the Year, according to the *Division* of it in the *Calendar* into 12 Months, which is *another* Signification of the *same* Word; it would be *very Reasonable* and *Just*, that, *such doubtful Word* should be *understood*, rather according to *his*, than to *their* Sense and Interpretation of it; because, *such Pension* is *not* due to them as a *Debt of Justice*, and *before* the making of the *Promise*; but, *out of Charity*, and by *Virtue* of a *free Promise*, and *not* by *Virtue* of *any Covenant*, or *Contract*. And, of *this Kind of Oath* those Words cited in the *Gloss* upon the *Canon Law* ought to be *understood* (1) "*It is Evident, that God does*
"*not understand an Oath in the same Man-*
"*ner that the Person does, to whom it is sworn;*
"*but rather, as He who swears understands it.*
But, to the *End*, that *this Answer* may be *better understood*, *two Things* are to be *observed*. The

(1) *Gloss. ad C. 22. qu. 5. 2. 11.*

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one is, that, *this Method obtains and takes place chiefly in spontaneous Oaths and Promises; compulsory Oaths being of quite a different Nature, as shall presently be shewn.* The other is, that, the Swearer is, in the present Case, bound to perform his Promise in *that Sense*, which he either really intended, or would be understood by his Auditors to have intended by his Words at the Time of swearing; but, not in that Sense, which he, at his Pleasure, should afterwards think proper to affix to them. For, God, who sees the Heart, is not imposed upon by Words; “Nor, (m) ought the Intention to be subservient to Words; but, on the Contrary, Words ought always to be subservient to the Intention.”

9. The second Case is, THE FORTY-SEVENTH CASE. concerning (n) demanded or imposed Oaths and Promises, that is, concerning such as are administered, or tendered to the Swearer by another; or, which some other Person, either in his own Right, or under the Pretext of some Right of his own, requires from the Swearer. Such, in the first Place, are those Oaths, which Subjects are enjoined to take by the Authority of their Governors; or, are appointed and ordained by the Laws; as among us, the Oaths of Supremacy and Allegiance to the King; and those, that, by

(m) Gregor. 26. Moral. 7. & habetur, 22. q. 5.

(n) “Ἐπαξιῶ ορκῶ, ἵφ’ ὃν ἔτερον ἀγνῶ, καὶ ἀνδρίῳ. Hefych.
ἢ ἀλλασχόδεν ἐπιφερομένον. Suid.

the Statutes of an University, are required of such as are promoted to Degree, and others of the like Nature; together with all Oaths, which, by the just Agreement of the Parties, are required from either of the contracting Persons; of which Nature are those that happen to be used for the mutual Confirmation of Faith in Agreements, Leagues, and other Civil Contracts. Now, in answer to this Case, I affirm, that, such Oaths ought regularly to be understood in that Sense, which may, with Probability, be judged to have been intended by the Person to whom the Oath is taken; insomuch, that, the Swearer is bound under the Pain of Perjury to fulfil what he has promised, (provided, it be lawful and honest), pursuant to the Intention of him that requires or tenders the Oath. For, says the Lawyer, (o) “Let the Words be understood according to the Sense and Intention of him to whom the Oath is sworn.” The Reason is, because, this Kind of Oath is taken for this End, that he, to whom it is sworn, may, by the Interposition of another Man’s Faith, have some Certainty, that what was promised him by the Swearer should be fulfilled. But, he would, in no Sort, be the more certain, that such Promise

(o) L. qui Interrogat. ff. de inter. ex legi. Rectissime dici non secundum verbum jurantis, sed secundum Expectationem ejus cui juratur quam novit ille qui jurat, fidem Jurationis impleri. August. Ep. 224. Expectationem eorum quibus juratur qui deceperit, non potest non esse perjurus. Idem Epist. 225.

would

would be fulfilled, if the *Words* should be understood according to the *Sense* and *Intention* of the *Swearer*, and not according to his *own Intent* and *Meaning*. For, the *Nature* of an *Obligation*, where the *Debt* is founded upon a *Promise*, is *different*; extremely *different* from *that*, where a *Promise* is founded upon a *Debt*. God himself who, by *Right*, is *Debtor* to *no Man*; yet, by his *gracious* and *free Promises* makes himself a *Debtor* to *us*; and *He*, who by a *Vow*, an *Oath*, or a *spontaneous Promise*, binds himself to the *Performance* of some *Act* of *Charity*, does by so doing *really* contract a *Debt*. But, because, *this Debt* is *not* founded on the *Right* of him to *whom* the *Promise* is made, but flows from the *mere force* and *gracious Act* of the *Person* himself that makes the *Promise*, it is *very* just and reasonable, that, *he* should be the *Interpreter* of his *own Intent* and *Meaning*, who is *principally* concerned to know, *how much*, *how far*, and in *what Sense*, he *intended* to oblige himself. But when, on the *other Hand*, the *Promise* *itself* is founded on some *antecedent Debt*; namely, on a *Debt* of *Subjection* or *Obedience* arising from the *Authority* of a *Superior*; or, of *Justice* and *Contract* arising from the *Agreement* of *Parties*; because, *He*, to whom the *Promise* is made, has a *Right* to *require* it, and it *principally* concerns *him*, that, *such Promise* should be *faithfully* performed; then, *Reason*

son requires, that, a Judgment should be formed concerning the Obligation of such Promise, rather from his own Sense and Interpretation, than from the Sense and Meaning of the Person that makes such Promise to him.

10. The Third Case, is, where a Person, tendering an Oath of doubtful Signification, requires only to have it taken in such, or such Words; but, in the mean Time, leaves it to the Judgment and Pleasure of the Swearer himself, to understand the Words of such Oath in whatsoever Sense he pleases. In Answer to which, I affirm, that, an Oath, tendered under such a Condition, ought deservedly to be suspected of some concealed Fraud; and, consequently, ought to be refused by every pious and prudent Man. Now, I shall assign three Reasons, why such an Oath ought to be refused, and not taken. The First is, with regard to the Oath itself; in which Truth is, in the first Place, required: But, a Sentence of indefinite and doubtful Sense, before the making of a Distinction, is not a true Proposition; nay, no Proposition at all; in regard a Proposition, as is evident even to Boys from the Definition of it, "ought to signify something true, or false, without any Ambiguity;" The Second is, with regard to the Person, to whom the Oath is to be taken. For, the proper End of an Oath, is, that he, to whom it is sworn, may have some
Certainty

THE FORTY-EIGHTH
CASE

Certainty or Assurance concerning a Matter that was before uncertain. But, what Certainty can be had from Words of doubtful Sense and Signification? The Third, is, with regard to the Person of the Swearer himself, who, in case he should take an Oath under such a Condition, would not only scandalize his Neighbour, but likewise lay a Snare for himself. For, it cannot be imagined, to what other End such a Collusion should tend, but, either by our Example to induce others, (though, perhaps, with reluctant Consciences), to take the same Oath, which is no other than to scandalize our Neighbour; or else, that, some other Thing may, by virtue of such Oath, be hereafter required of us to be done, which, perhaps, may be, either unlawful, or inconvenient; and, what is this, but to lay a Snare for ourselves? A prudent Man, therefore, ought to take care, not to suffer himself to be imposed upon by such Artifices as these; and, not to esteem the Fear or Favour of any other Person whatsoever at so high a Rate, as to swallow a Bait, under which he certainly knows a dangerous Hook lies covered and concealed. It is, indeed, expedient, to the End that all Things may be rightly performed in the taking of an Oath, that, all Parties concerned should be clearly agreed about the Sense and Meaning of the Words. This was what was by the Antients called,

called, "*Liquido jurare*; or, to swear plainly
and clearly."

Sic tamen, et liquido juratus, dicere posses.

Among whom, (as appears from an old Form),
the Person who tendered an Oath generally re-
peated this Clause to the Party about to swear;
namely, "*Concerning this Matter, I desire, you*
will swear with all Perspicuity and Clear-
ness."

II. But, we have said e-
nough upon this Head. I pro-
ceed now to the Third Doubt,

The FORTY-NINTH
CASE.

which is, concerning the Sense of an Oath, as
to the Latitude, or Extent of it; that is, whe-
ther, and how far, is the Sense of the Words to
be estimated, or determined, from the Scope of
them? The First Case here, is, where the Cause
of some Oath is only particular; but, the Words
are general. For Example; the Usurpation of
the Pope, who claimed to himself the supreme
Jurisdiction in Things spiritual throughout this
Kingdom, was the Cause of the Oath of regal
Supremacy; yet, the King's Supremacy is, in
such Manner, asserted in the Words of that
Oath, that, not only the Pope, but all other
Persons whatsoever are universally excluded from
the Exercise of the supreme Power in this King-
dom. To which I answer, that, such Oath is
obligatory,

obligatory according to the express Words, in the very utmost Latitude or Extent of them. The Reason is, because, the Intention of a Law, though made upon a particular Occasion, is general, in order to hinder and prevent all Grievances of the like Kind or Nature for the future. And, therefore, though mention is often made only of some particular Evil, or Grievance, in the Preamble of a Law, which gave occasion to the enacting of it; yet, the Words, in which the Law is contained, are, for the most part, general; which is done industriously, and on set Purpose by Legislators, in order at once to comprehend therein all other Things of a similar Nature. As therefore, Lawyers draw their Arguments and Answers concerning the Sense of a Law, not from the Preamble; but, (as they speak), "from the Body of the Statute," or Law itself; so, a Judgment ought to be formed concerning the just Interpretation of an Oath; not from a premised Recognition, or any other Preface thereof; but, as it were, from the very Body of the Oath itself.

12. The Second Case, is, after what Manner, or how far, ought an Oath, under some Condition, to be understood? I answer briefly; First, that, if the Words contain an express Condition, the Swearer is not bound, 'till the Condition be first performed: As, if Caius should promise to give Titius

THE FIFTIETH
CASE.

Titius an hundred Pounds To-morrow, provided, *Titius* shall give him Possession of a certain Piece of Land To-day. If the Possession of the Land be not given; *Caius* is not obliged to the Performance of his Promise. Secondly, if no Condition should be expressly mentioned; yet, all those Conditions and Exceptions are to be presumed, which, by Right, and common Custom, use to be understood; as, I will do this, or that, "if God permit;" or, "provided, the Rights of others be preserved;" or, "in case Matters continue in the same State or Condition;" or, "so far as I shall be able, and it may be lawful;" as has been already copiously shewn in the Explication of the second Hypothesis.

13. The Third Case, is, concerning the remote and nearest Intention of an Oath. The FIFTY-FIRST CASE.

For, He seems to have made good his Oath, who has performed what he had intended in his remote Intention, and proposed, as his End; though he should not perform it according to the Sound of the Words, which commonly contain the nearest Intention only, or, the Means. For Example; should a Man engage by Vow, Oath, or Promise, to give the Sum of ten Shillings every Month to the Poor of some Town; but, should not give any during the Months of January and February; but, in the Month of March should give them thirty Shillings? I answer, that the

T

Swearer,

-Swearer, if he intended to oblige himself only to the Substance of the Thing; but, not to the Circumstance or Manner of it, is not simply obliged to the Performance thereof in that very Way or Manner, which the Words seem to insinuate. Whence it is, that, should the Person in the Example before us give the whole three Months Pension in the first Month, He must undoubtedly be allowed to have made good his Promise. Yet, it may come to pass, that, such Person may, by Accident, and consequentially, be obliged, even to the very Manner of the Thing; because, every one is bound, (provided, all Things be equal, and nothing else impedes), in doubtful Things to make choice of that which is the safest: As, in the Example now produced, it is certainly much safer to pay the Pension in the Manner wherein it was promised, that is, to pay ten Shillings every Month, than to pay thirty every third Month; not only, on Account of the Danger of sudden Death, and uncertain Events; but also, in order to avoid Scruples of Mind, which may arise even from the Neglect of such a Circumstance. I would, therefore, advise every prudent Man to endeavour faithfully to fulfil every Vow, Oath, Covenant, or Promise, according to the Tenor of the Words, and of his own Intention, so far as he conveniently can, even in the most slight and trifling Circumstances; lest, by contemping those minuter Things, he should
either

either create to himself *unnecessary* Scruples, or insensibly and by Degrees contract a *Habit* of despising *more important* Matters. But, however, I must *here* beg leave to warn *all* Men of *this* one Thing, as the *Sum* and *principal Conclusion* of this *whole* Differtation concerning the *Sense* and *Interpretation* of an *Oath*; namely, “ That, they take *very great* Care not to be too *indulgent* to themselves in *this* Matter, lest they should, by too *favourable* and *loose* *Interpretations*, while they are *unreasonably* gratifying their *own* Lusts and Passions, *diminish* and *infringe* the *Religion* of an *Oath*, and so, expose themselves to the *Danger* of *Perjury*. And, *this* may suffice to be said concerning the *formal Cause* of an *Oath*.

14. Some few Things remain still to be said concerning the *Final Cause* of an *Oath*.

THE FIFTY-SECOND
CASE.

The *First* Doubt, is, when a *Thing* in itself *lawful* is promised, either with a *bad Intention*, or, for a *bad End*. To which I answer, *First*, That, it is *simply unlawful* to *promise* any *Thing*, how *lawful* soever *in itself*, for a *bad End*, or, with an *evil Intention*. The *Reason* is, because, as any *one Defect* in a human *Action* is *sufficient* to render the *whole Act* *evil*, (“ For *Good* proceeds from an *entire Cause*, but “ *Evil* from every *partial* one); so, more especially, a *Defect* with regard to the *End*, which

holds the *principal* Place in *moral Matters*, will vitiate it: To which, in the Opinion of Many, that Saying of Christ relates, (p) “If thine
 “Eye be evil, thy whole Body shall be full of
 “Darkness.” Secondly, I affirm, that, should any Person swear to another for a *dishonest End*, but, without obliging the other to the Performance of any *base Condition*; such Person is bound to fulfil his Promise. Thus, should a Man promise to bestow a Woman some *precious Jewel*, intending at the same Time within himself by such Present to seduce her into *Lewdness*, without proposing any *dishonest Condition* to her; such Man would be bound to make good his Promise; but, should he, at the same Time, propose a *dishonest Condition* to her, he would not be obliged to perform it. The Reason of both, is, because, it is *lawful* to give another Person a *precious Jewel*; but, *unlawful*, to give upon a *base or wicked Condition*. Thirdly, I answer, that, whatsoever is promised upon an *evil or dishonest Condition* ought to be fulfilled so soon as the Condition is performed, provided, the Matter itself be *lawful*: As, should one Person promise another a Sum of Money for committing *Adultery*: or, for bearing *false Witness*; or, for any other *base or dishonest Service*; such Person would be bound, so soon as the other has performed the *stipulated Condition*, to stand to his Promise, and pay the

(p) Mat. vi. 13.

stipulated Money. Thus, (q) *Judah* rightly imagined himself *obliged* to send *Thamar* his Daughter-in-law the *Kid* which he *promised* her, as the *Price* of her Whoredom. The *Reason* is, because, though the *Bargain* was *unlawful*; yet, the *Thing bargained for*, was *not* unlawful: Wherefore, it ought *not* to have been done; but, so soon as it was done, it became *obligatory* and *valid*. So that, from what has been already said, it is sufficiently evident and clear, “ that, an *unlawful Oath* concerning a *Thing* that is *lawful* may possibly be *obligatory*.

15. The *Second Doubt* relates to the *Intention* of the Swearer. I do not call that, The FIFTY-THIRD CASE. the *Intention*, which is carried *objectively* to the *Matter of the Oath*, or to the *Thing promised*, by which it is demanded and enquired, what the Swearer *intended* to promise, and in what *Sense*, and, to what he *designed* to oblige himself; for, we have already spoke of this *Intention*, when we treated of the *Sense* and *Interpretation* of an *Oath*; but, I call that “ the *Intention* here, which is carried *objectively* to the *Act itself* of *swearing*, by which it is enquired, whether he *intended* to *swear*, or *bind* himself thereby, or *not*. Now, concerning this, the *Schoolmen* copiously dispute with more *Subtily* than *Profit*; but, the *most* of what appears *useful* for the *Institution* of *Life*, I

(q) Gen. xxxviii. 20. 23.

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I shall endeavour to contract into the *few* following Cases. The *First Case*, then, is, when a Man, out of a certain *Custom* of *swearing*, thoughtlessly pours out Oaths, which he seems always to have in his Mouth, or, at his Tongue's End. To which I answer, *First*, that, 'tis certain, *such a Custom* of *swearing* is a great and crying Sin; not only *originally*, and on Account of the Cause; because, it flows from a *wicked Habit*; but also, *formally*, and in respect of the *Act itself*; inasmuch, as an *Act*, in its own Nature religious, is *rashly* committed, and *not in Judgment*; but, without *due Reverence* and *Respect*. *Secondly*, I answer, that, *such an Oath*, provided the *Act* of *swearing* was *not*, through the *Precipitancy* of the Mind, *deliberated* upon at all, or considered, is *not* Obligatory; but, if it was at all, though in never so *small* a Degree, *deliberated*, or considered upon, by the Mind, it is in *some Measure* obligatory. The *Reason* of both Members of this Assertion, is, because, in order to render any human Act obligatory, *Deliberation of Mind* is necessarily required; and, the *Measure* of the *Obligation* arises from the *Measure* of the *Deliberation*.

THE FIFTY-FOURTH
CASE.

16. The *Second Case*, is, when a Man, (in the Language of the *Casuits*), for *Honour*, or *Complaisance* sake, rashly swears about a *Matter*, that is, perhaps, of *very little Moment*. For Example;

Example; as, should *one* Man, contending with, and, as it were, giving *another* the *Prerogative of Honour*, which *often* happens, take his *Oath*, that, *He* would *not* go out of the House, nor sit down to Table, nor drink, 'till the *other* should go out, sit down, or drink, *before* him. Nay, since it very often comes to pass, that, *both* of the Parties *thus* contending swear the *same* Thing; if *such* Oaths should be *obligatory*; then, *one* of the *Two* must of Necessity *forswear* himself; because, *one* of them must unavoidably do what *both* of them swore *not* to perform. Now, to *this* I answer, *First*, as *before*, that, *such* Oath is *rash*, and *not* free from *Sin*; because, it wants, or is *not* taken in *Judgment*. *Secondly*, That, *such* Oath is, notwithstanding, in its own *Nature* *obligatory*, unless the *Act* should happen to be altogether void of *Deliberation*. But, *Thirdly*, I affirm, that, the *Obligation* of *such* an Oath may be, either *impeded*, or *entirely* taken away, in *such* Manner as that the Person shall *not* be *perjured* though he should do *otherwise*, than as he *has* sworn. For, the *Obligation* may be *impeded* or obstructed, in case it should be understood with a *tacit* *Condition*, or *Exception*, in *this* Sense; namely. "If you will be pleased;" or, "If you will submit the Matter to my Judgment, or Direction, I will not stir, unless you will go before me." It may also be *entirely* taken away; because, since it proceeds from a *certain*

Regard to the Honour of another Person; such other may recede from his own Right; and then, the Obligation will cease of Course; as, (God-willing), I shall fully shew you, when I come to Treat of the Solution of the Bond, or Obligation of an Oath.

17. The third Case, is,
THE FIFTY-FIFTH CASE. *whether a Man that is doubt-*

ful, whether he has sworn, or not, be obliged by such an Oath? Some are of Opinion, that, He is not obliged, pursuant to that Rule of Law, " In doubtful Cases the Condition " or Title of the Possessor is always the better. But, since that Rule is valid only in those Things that relate to commutative Justice; as, if the Heir of Caius should be in Doubt, whether the Goods of the deceased, which came to him by Will, were honestly acquired, or not. But, others, and perhaps with greater Reason, are of Opinion, that, He is obliged by such an Oath, unless he can entirely divest himself of the Doubt. The Reason is, because, " In Things doubtful, the " safer Side is always to be chosen : And, it is certainly much safer for him to think himself obliged, than not obliged; because, by an Error with Regard to the Former, he at most exposes himself only to some temporal Inconvenience; but, by an Error with Regard to the Latter, he exposes himself to the Danger of Perjury.

18. The

18. The fourth Case, is, whether a Person, who is willing to swear, yet intends (6) not to oblige himself, be, notwithstanding, bound? Most of the Schoolmen and Casuists, especially those that lived before Cajetan, are of Opinion, that, He is not obliged. And, indeed, (r) Cydippe

(r) Ovid. in Ep. Cydip.

(6) The Abbe de la Bertier, who lived and died in the Communion of the Church of Rome, was so far a follower of Truth as to assert, " That, the Jesuits teach us to deceive Men by false Promises, and to swear a Thing to be Black when we know 'tis White; and yet, our Promise shall be still reckoned sincere, and our Oath, sacred; at least, this is what they pretend to; and that, by Means of directing the Intention. Let us hear Filliucius, (says he), that famous Casuist, and the Pope's Penitentiary: He stands up to speak first, and is going to give us a clear and evident Proof, to let us thoroughly into the Meaning of a Direction of the Intention. " The Man, (says that Jesuit,) who has eternally promised any Thing, (Suppose a Sum of Money), but without an Intention of promising, (Pray do not fail to observe these Words, " Without an Intention of promising, for here lies the Juggle), that same Person, says this great Jesuit, (Tom. 2. tr. 25. N. 323.) being asked, whether he made such a Promise, may deny it, meaning to himself, that, he did not make a Promise, that was binding: Nay, says he, he may go much farther; for, he may even swear to it; or else he would be urged to pay what he doth not owe.

Tambourin, who goes beyond Filliucius, excuses even those from keeping their Word and Oath, who make a Doubt, whether they intended to oblige themselves to keep such Words, or such Oath. " Tho' you are sure, says he, in Decal. L. 1. c. 3. || 7. N. 63. That you have made a Vow, or an Oath, it is probable, in my Opinion, that you are not bound by it, if you doubt, whether you had an Intention to oblige yourself to stand to it.

But, Valentia, (another Jesuit), goes a great deal farther, and, in this Respect, is much more Complaisant. He is of Opinion, " That, even tho' one made a Promise with an Intention of being obliged

dippe in *Ovid* excuses herself from *Perjury* by the same Kind of Argument.

It is the Mind, with which we swear,
But, I had *no* such Meaning there.

“ *obliged* to it, the *Obligation* does *not* take Place, provided, there
“ was no Design to perform the Thing promised: And, the Reason
“ *he* gives for it is very curious; because, says he, the Vow, (and to
“ be sure, he would say the same of an Oath), becomes null and
“ void, if you have no Will to put it in Execution.

Let us stop a little, (*says this learned Abbe,*) to Survey this Cascade of Intentions, the finest and best contrived in Nature.

First, If a Man makes a Promise, with an Intention not to bind himself to keep it; this Direction of the Intention, according to *Filliucius*, actually excuses him from keeping it, and even gives him a Right to swear, that he did not make it.

Secondly, If he Doubts that he had an Intention to engage himself by a Vow, or an Oath, which he is sure he made, this very Doubt, according to *Tambourin*, disengages him from his Vow or Oath.

Thirdly, Nay, tho’ a Man had the best Intention in the World, and the fullest Resolution to be obliged to his Promise; yet, according to *Valentia*, he is not obliged, when he has not the Will to perform the Thing promised. This is a Sample, (*says he*), of the Jesuit’s Doctrine, how to make Vows, Promises, and Oaths, which are not binding. But, I demand, if this is not the Divinity of Cheats and Knaves?

“ An honest Man, (*as Cicero says*), would tell you, (*L. 1. de off. c. 7.*) “ The Foundation of Justice is Faith, that is to say, a
“ Firmness and Truth in our Words, Promises, and Contracts; and
“ we believe; says he, that, *Fides* is so called, *quia fit quod dictum est*; because, that which is said is done. That was the Divinity of the honest Pagans. But, to say, that, a Person is not the less honest Man; because, he does not keep his Promise; and, to make all the Faith of Promises depend upon the Will of not keeping them, that is, as much as to say, upon Infidelity itself; because Infidelity in Promises is nothing else, but the Will of not doing what is promised: Is not that the Divinity of Cheats and Pick-pockets? (*V. Parallel of the Doctrine of the Pagans with the Doctrine of the Jesuits. Ch. 9.*)

But

But the *Opinion* of *Cajetan* and of those *Schoolmen* that follow him is much more rational and sound, namely, “ That, whether he *intends* to oblige himself, or not; He is, notwithstanding, bound. For, since the *Act* of *Swearing* is in itself obligatory, and flows from a *deliberate Mind*; an *Obligation* must, therefore, necessarily follow, unless it be otherwise impeded or obstructed. Now, since an *Obligation* necessarily and naturally flows from an *Oath*; it is not in the *Power* of *Man*, either to impede, or to remove it. For, no *Man*, the *Natures* of *Things* being laid down and truly stated, can impede or hinder their necessary *Effects*. Would not *He* justly become the *Scorn* and *Sport* of every one, that, when about to put his *Hand* and *Seal* to an obligatory *Bond*, should yet profess and declare, that, he had no *Intention* at all to bind himself thereby? Nay, notwithstanding such a *Profession* of his *Intention*, would he not by such *Act* be, nevertheless, Bound? So likewise, *He* that swears, is obliged by the very *Act* of *swearing*, whatever he *intends*, or professes himself to intend. Because, *He* that intends the *Cause*, is always presumed likewise to intend the necessary *Effect* of such *Cause*.

And thus, have I, at Length, by the Conduct of *God's* Goodness, accompanied with your *Patience*, dispatched, to the utmost of my Ability, this difficult and copious *Dissertation* concerning the *Bond* or *Obligation* of an *Oath*; having deduced

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deduced it through the *four Kinds of Causes*,
the *Material, Formal, Efficient, and Final*.
And, the *remaining Part of this Treatise*, which
relates to the *Solution of this Bond or Obligation*,
I shall, (God-willing), Endeavour, as soon as
an *Opportunity* offers, to comprehend in *another*
Lecture.



THE

THE
SEVENTH LECTURE.

I. **T**HE *Solution of that Bond or Obligation,* which, every Man that swears, binds upon his own Soul, and concerning which we have already so copiously discoursed, is the Task appointed for this Day, and the last Part of our intended Treatise upon this Subject. Now, concerning this *Solution*, before we descend to the *Species*, or *particular Kinds* thereof, two Things are, in general, to be observed. First, It is to be observed, that, the *Solution of this Bond, or Obligation* is peculiar to a *promissory*; but, has no Place in an *assertory Oath*. In every *Oath*, whether *assertory*, or *promissory*, there, ought, indeed, to be *Truth*; but, with this Difference, that, a single *Truth* regarding only the *present Time*, is sufficient in an *Assertory*; whereas, a double *Truth* is required in a *promissory Oath*; namely, one regarding the *Present*, and, the other the *Future*. *Truth*, regarding the *Present*, relates to the very *Act itself of swearing*, and consists in this, that, the *Swearer* speak *Truth* at the very precise *Time* he takes his *Oath*, that is, that, his *Mind* be agreeable to his *Words*, and, that he intend to stand to, or perform what he promises.

promises. Now, *this Act of swearing in a promissory agrees exactly, as to Truth or Falsehood, with the Act of swearing in an assertory Oath.* For, the *Matter of such Truth in both Acts, regarding only the present Time, passes, as it were, into a certain immutable Necessity; Inasmuch, as an Oath, so soon as taken, becomes immediately, either (a) true, or false: Which Truth or Falsehood, as soon as the Act is once passed, is as impossible to be changed, as 'tis impossible for that which was once done to be undone again: That Obligation, therefore, by which the Swearer is, for the Present, bound to speak Truth, falls upon and affects the Act itself of swearing, and, is inseparably connected with it; and, consequently, cannot be loosed nor severed from the Oath.* In an *assertory Oath*, indeed, there is *no further Obligation, than that which regards the present; because, the Matter of it is, either some past, or present Fact.* But, in a *promissory Oath*, the *Matter* whereof is a *Thing to be hereafter performed, another Kind of Truth is likewise required; namely, that regarding the Future, which relates to the Matter of the Oath, and consists in this, that, the Swearer take care to verify what he has promised; that is, to fulfil his Promise.* Now, since the *Matter of a promissory Oath, that is, a Thing to be performed in some future Time, is, on Account of the Uncertainty of future Events, obnoxious to*
manifest

manifest Changes and Alterations ; hence it comes to pass, that, the *Obligation* which falls or rests upon such Matter, and, by which the Swearer is bound to fulfil his Promise in some future Time, is mutable, and separable from such Oath : and, this is the very Thing which we call, “ *The Solution of the Bond or Tye* thereof. From whence that which is, in the second Place, to be observed, clearly follows, namely, that, the *Solution* of the Bond in a promissory Oath ought not to be understood with Respect to that prior or former Obligation which arises from the Truth regarding the present, and is common to it with an assertory Oath ; but, ought to be understood solely, with Respect to that posterior or latter Obligation, which arises from the Truth regarding the Future, and is proper and peculiar only to it, that is, in other Words, “ *Every Man* that takes a promissory Oath, is, actually, and by Virtue of the very Act of swearing, simply and indissolubly obliged for the present, heartily and faithfully to intend to perform that hereafter, which he has promised ; but, after he has taken such Oath, it may for many Reasons come to pass, that, he may not be obliged for the future ; or to perform that afterwards, which he had before promised and intended. In a Word, that Man is always perjured, (a) who does not intend to perform what he has promised ; but, He is not always per-

(a) Πρόδοσιν ἔχει μὴ ἐπισκεῖν. Cleanth. apud Stobæ. Serm. 28.

jured, who does not *(b)* actually fulfil what he has promised.

2. But, that, *what has been once promised upon Oath, may lawfully and without Danger of Perjury, or of any other Sin, be omitted or left unperformed*, must necessarily come to pass for one of these two Reasons: Either, because, there was no *Obligation* at all from the Beginning; or, because, the *Obligation* may afterwards, by a *Solution of the Bond or Tye*, be cancelled and disannulled. If the *Thing promised*, was, at the *Time of swearing*, either impossible, or unlawful; then, the *Oath taken* concerning such *Thing* did not induce or impose any *Obligation* at all; and, consequently, does not want to be dissolved, but to be repented of: Forasmuch, as, though a *grievous Sin* was committed by the taking of such *Oath*; yet, no *Bond or Obligation* was thereby contracted. For, we have already clearly shewn, “*That, to the Performance of a Thing, either impossible or unlawful, there can be no Obligation*. The *Solution*, therefore, of such *Bond* supposes an *antecedent Obligation*, and denotes, or implies, that, such *Obligation* may afterwards be so disannulled or taken away; or, at least, may, by some other Means, be impeded or hindered, as that he, who was before held bound by the *Bond* of such *Oath* in such Manner as that

(b) Non omnis, qui aliter facturus quam promittit in dolo, jurat. 22. qu. 2. cap. Animadvertendum.

he could *not* do otherwise, under the Pain of *Perjury*, than as he had promised, is now no longer bound to the Performance of his Promise, Our Business, therefore, at present, is, to discover and find out some certain Reason or Method, by which He who has bound himself by the Bond of an Oath to the Performance of some certain Thing, may rest secure in his Conscience, that, he is freed from such Bond, and no longer obliged to the Performance of what he has promised. Now, since there are five Ways of doing this commonly assigned, we shall examine each of them, in its proper Order.

3. The First Case, is, concerning the *Dispensableness* of an Oath; whether, and how far, the Dispensation (1) of a Superior can cancel and take away the Obligation of it? The Word,

THE FIFTY-SEVENTH CASE.

(1) It must be owned, there is a great Disagreement among the Romanists themselves concerning Dispensations. A Bishop, giving his Opinion in the Council of Trent upon Dispensations, said, That, the Council ought to declare, that, there ought to be a lawful Cause of Dispensation, and that he who grants it otherwise, sins; and cannot be absolved without revoking it: And that, he who accepts and makes use of the Dispensation, so far from being Faultless, lives in continual Sin, as long as he makes use of it. To which others replied, That, in Truth, he who grants it without lawful Cause, sins; but that, however, the Dispensation holds good; so that, the Conscience of him that obtains it, is untouched, though he knows, that the Cause is not lawful. (Father Paul's Hist. Coun. Trent. L. 2.)

A Dominican, one Hadrian Valentine, had the Courage to say, that, the Pope being above all human Laws, had full Power to dispense with them; and that, even though he should grant a Dispensation without Cause, it ought still to be deemed valid: And that,

Word, "*Dispensation*, according to the common Acceptation thereof, signifies, " an *Exemption* of some Person from the common or general Course of the Law, granted by the special Favour

he can also *dispense* with *divine* Laws, provided, there were a *lawful* Cause. He afterwards adds, that, though *Dispensation* of a *divine* Law, granted *without good Cause*, were *not valid*; yet, *whatsoever the Dispensation were*, every one ought to *captivate his Understanding*, and *believe*, that there was a *lawful Cause*.

In the *same History* (L. 7.) *John de Verdun*, a *French Benedictine*, is quite of a *different Opinion*. *Human Laws*, says he, are subject to *Dispensation*, because of the *Imperfection* of the *Legislator*, who cannot foresee *all the particular Cases* which may call for an *Exception*; but, where *God* is the *Legislator*, the *Law* is *without Fault*, because, nothing can be hid from *his Knowledge*. It is not therefore, that, he who *dispenseth*, can ever *disengage him* who is *obliged*; nor make *him* remain *obliged*, who is denied a *Dispensation* if he deserves one. It is a *popular Error* to believe, that, *Dispensation* is a *Favour*, seeing it is an *Act* of *distributive Justice* as much as any: And, *he sins*, who grants it *not to those to whom it is due*. The *Church* is *not a Servant*, nor is the *Pope* its *Master*: It is the *Pope's Part*, who is *only Servant* of *him* who hath set him over the *Christian Family*, to give to *every one* what is *due* to him. *Luke xii. Dispensation* is nothing but a *right Interpretation* of the *Law*; and consequently, the *Pope* cannot, by his *Dispensations*, *disengage* those who *really are obliged* to observe a *Law*; but, he may very well *declare* to those, who are *not under any Obligation* to a *Law*, that they are *not obliged* to observe it.

A late ingenious *Writer* says, " The *Pope* notoriously claims
 " *Power to dispense with Oaths*, the *most awful and important Oaths*,
 " *all Oaths and Engagements to Princes and States*, and *all Oaths and*
 " *Engagements from Princes and States*. For many *Centuries*
 " *successively*, (in the *dark Ages*, when the *Papal Power* flourished
 " *most*), hardly a *Year* passed, but *his Holiness* discharged some *So-*
 " *vereign* from his *Oath* to his *People*, or some *People* from their
 " *Oath* to their *Sovereign*, as often as his *Wrath* or his *Avarice*
 " prompted him; for, *one or other*, or *both* of these *pious Motives*, ge-
 " *nerally* swayed the *holy Father*. He frequently tempted an in-
 " *cented Prince* and *People* to *violate Laws and Oaths*, and to *op-*
 " *press* one another. He particularly warranted the *repeated Per-*
 " *juries* of our *Henry III.*, who was continually oppressing the Na-
 " tion,

Favour or Indulgence of one invested with proper Authority so to do: As, if a Person, who is subject to some Law, should yet, by the Prince's Kindness and special Favour, be exempted from paying Obedience to such Law: As, we daily see done in our Universities, where Dispensations are, for reasonable Causes, often granted to particular Persons to act otherwise in some Cases, than as the Statutes ordain. Now, the Right of dispensing is founded on that Moderation which requires, that, something of the Rigor of the Law should be sometimes abated or relaxed, in order to make room for Equity. For, since it is necessary, that, Laws should be made in general Words, and should regard what is ordinarily, and for the most Part, good and profitable to the Public; which may, notwithstanding, often happen, according to the Circumstances of Time and Place, to be unprofitable, or, at least, less convenient and good; it, therefore, seems just and reasonable, that, where the Observation of that which is established by Law seems to be

tion, and as often frightened by the Barons into Oaths and Concessions; then as readily discharged by the Pope from fulfilling them, but never without competent Price."

" This Practice was as common in most catholic Countries, as horrible in all. The Popes were for ever dispensing with Laws, Oaths, Canons, and even with their own Decrees; and they had a Non-obstante to all Engagements secular and sacred, to God and Man. Was not all this owning, as well as practising, Dispensations to lie, and to swear falsely? (Gordon's Collection, &c. p. 121. Dub. Ed. 1748.)"

very grievous and inconvenient to some private Person; and that, by the Omission of it, no great Damage can be done to the Public; there, the Prince, or other lawful Superior, should be vested with a Power of ordering and determining the Law to be suspended, and not observed: And, this is what we, in the Law, call, “a Dispensation.” But, (c) the Popes of Rome challenge to themselves the same Power of dispensing with Vows and Oaths, which secular Princes exercise with regard to their own Laws. And, I wish some of those, who very justly condemn their Effrontery in absolving Subjects from Allegiance to their Kings; in rescinding the Contracts and Leagues of Princes; in commuting for the strictest Ties of Vows and Oaths, or, in dissolving them at their Will and Pleasure for their own Advantage, by Relaxations, Dispensations, by Commands of a contrary Nature, or by some other Artifice, would not themselves most wickedly follow their Examples. But, this Power of dispensing with Oaths, which others exercise in Fact, the Pope alone claims as due to himself, by Right. Many have grievously complained of this Infringement, and bitterly inveighed against the Abuses of Papal Dispensations, even before Luther, to whose Writings I must refer those who are curious in such Matters; and, shall only endeavour at present, by some Arguments to evince, that, the Bond of an Oath is simply indispensable;

pensable; inſomuch, that, neither the Pope, nor any other Perſon whatſoever, has any Power at all of diſpenſing with it. *First*, Becauſe, the Obligation of an Oath is a Matter of divine natural Law or Right; but, natural Law is not ſubject to human Cognizance, or Courts; in regard, God alone is the Author and Lord of Nature: Nor, could it be ever yet ſhewn, that, God granted to any Kind or Order of Men an Authority to diſpenſe (c) with Things of natural Right, or, with the Law of Nature. *Secondly*, becauſe, if this Power of diſpenſing ſhould be once allowed, the principal End of an Oath would be entirely overthrow and deſtroyed, which is, the Security for, or Assurance of, obtaining the Thing promiſed. For, He, to whom an Oath is taken, could have no Certainty, or Assurance; that, the Thing promiſed ſhould ever be performed, or made good, if the Swearer might obtain a Diſpenſation not to perform or fulfil it. *Thirdly*, Becauſe, an Oath, by the very Act, and at the very Inſtant that it induces or impoſes an Obligation upon the Swearer to keep his Promiſe, does alſo, at the ſame Time, give or acquire, with regard to the Party to whom ſuch Oath is taken, a Right to the Thing promiſed: Which two Effects of an Oath are ſo inſeparably connected together, that, when one is admitted or denied, the

(c) Et tamen de Papa ſic Gloſſa. Dico quòd contra jus Naturale poteſt Diſpenſare. ad 15. qu. 6. cap. Authoritatem.

other must also, of *Necessity*, be granted, or denied together with it. If therefore, it should be supposed, that, the *Obligation* of the *Swearer* might be cancelled, or taken away by a *Dispensation*; the *Right* of him also, to whom the *Oath* is taken, would be taken away likewise: And, from thence it would likewise follow further, that, such *Dispensation* would be, either *vain*, or *iniquitous*: It would be *vain* and *superfluous*, in case it should be done with the *Consent* of him, to whom the *Oath* is taken; but *Iniquitous* and *Unjust*, if against his *Will*. For, by the *Consent* of a willing Person, an *Obligation*, (as I shall presently shew), may be remitted, even without a *Dispensation*; but, it would be highly *injurious* to take away the *Right* of any Person against his *Will*. Fourthly, Because, in a *promissory Oath*, an *Obligation* is contracted, not only with respect to our *Neighbour*, considered, as *promissory*; but also, with regard to *God*; inasmuch, as it is an *Oath*, or an *Act* of *Religion*. Therefore, supposing, but not granting, that, a *Prince*, or *Prelate* has *Power* to annul an *Obligation*, by which one Man is bound to another in respect of his *Promise*; yet, the *Presumption* of any Man, who is but *Dust* and *Ashes*, ought not to be endured, who should arrogate to himself a *Power* of cancelling an *Obligation* by his own *Authority*, whereby a Man is bound to *God*, as to a *Witness*, and an *Avenger*. Fifthly and lastly, Because,

Because, a *human Dispensation* is a *Matter* of *external Judicature* only; but, the *Obligation* of an *Oath* is a *Matter* of *internal Conscience*, which is subject only to *God*, as a *Judge*; and, over which, *Man* has no *Dominion*. Whoever, therefore, claims to himself a *Right* of *dispensing* with *Oaths*, assumes to himself a *Divine Power* of erecting a *Tribunal* for himself in the *internal Court*, and of exercising *Dominion* over the *Consciences* of *Men*. And, such a *Dispensation* is *invalid*, and, to all *Intents* and *Purposes*, *null* and *void* in *Conscience*; in the same *Manner*, that a *Sentence* pronounced by a *Judge* out of his own *Court*, because pronounced by one that is no *Judge*, is, to all *Intents* and *Purposes*, *null* and *void* in *Law*.

4. But, here the *Patrons*, or *Maintainers* of *Dispensations*, wonderfully rack their *Inventions*, in order to elude the *Force* of the *first Argument*, which alone they look upon to be the *strongest Objection* against them. About this *Difficulty* they take *great Pains*, (for, they find themselves under a *Necessity* of defending the *Pope's Authority* in this *Respect* at all *Events*, lest *He* should suffer in his *Revenues*); and yet, they gain *nothing* thereby. For, they are so far from having one *solid Argument* to urge in their *Defence*, that, they have never yet agreed, by what *Right* the *Pope* has arrogated this *dispensing Power* to himself; which one *Thing* argues,

that, *they themselves* must be *conscious*, that, *they* can make but a *very bad* Defence. For, as in the *making of War*, so likewise in the *Exercise of Power*, if the *Cause* thereof be not *constantly* and *uniformly assigned* and *asserted*, every one will readily presume it to be *unjust*. However, there are *some*, who, in the *first Place*, derive *this Power of dispensing with Oaths* from that absolute *Oecumenical Power* of the *Pope*, by which he is, "*Lord of the Earth, and Emperor of the whole World*." For, since every one that *swears* or *vows*, is the *Subject* of the *Pope*; Therefore, say they, *this Condition* ought to be *understood* in every *Vow* and every *Oath*; namely, (*d*) "*If it shall please our Lord the Pope*." Hence it follows, that, *so soon* as the *Pope* shall signify, (which he does by *his Dispensation*), that, *He* is not pleased, that *what* was *sworn* should be *ratified* and *confirmed*; then, the *Obligation* immediately *ceases*. But, should *this Opinion* be admitted and take place; then, the *Pope* might, at his own *Pleasure*, *break* and *annul* all *Oaths* whatsoever, whether he had *just Cause*, or not, for *so* doing. Others, therefore, rejecting *this gross and absurd Opinion*, among whom are some of the *modern Jesuits*, deny, that, the *Pope* has a *Power of dispensing with Oaths*, or, of *dissolving the Leagues of Kings*; nor, properly speak-

(*d*) Richard. in 4. distinct. 38. Art. 9. v. Sayr. 6, Clav. Leg. 11. Num. 8.

ing,

ing, can he do either, that is, by annulling, or taking away the *Obligation*; or, (in Case the *Obligation* should remain), by exempting any private Person from it; but then, they affirm, that, he can dispense improperly with an Oath, that is, by (e) declaring, that, an Oath in that Case is not obligatory, on Account of some Good which might be impeded, or, of some Evil which might follow, should such Oath be observed and kept. But, on the other Hand, besides that, the Practice of the Thing itself clearly shews, that the Pope exercises a more than declarative Power in this Matter, or, (which amounts to the same Thing), that, he may, under the Pretext of this declarative Power, determine as he pleases concerning Covenants, Vows, Oaths, and Leagues of Kings, and of all other Persons whatsoever, in regard He is in such Case the supreme and only Judge, to whose Sentence they must necessarily stand without any Appeal. Either, First, The Cause is manifestly just, why a Thing promised by Oath ought not to be performed, as, if it should be impossible, base, dishonest, or, in any other respect, unlawful; and then, the Swearer may, by his own proper Authority, retract what he has sworn; yea, he is obliged to do so, without waiting for the Pope's, or, any other Person's Dispensation: For, where there is no Obligation, the Conscience is undoubtedly free, and

(e) Bonavent. Paludanus, Antonius, &c. apud Sayr. ubi supra. N. 9.

stands in need of *no* Dispensation. Or, *Secondly*, *No just Cause* appears, why the *Faith* given in an *Oath* should *not* be preserved; and *then*, certainly, it *ought* to be *preserved*; and, whoever, in *such* Case, either desires, or grants a *Dispensation*, commits a *Sin*; because, the *Obligation* remains, which neither *can*, nor *ought* to be cancelled, or abolished by any *human Authority* *whatsoever*. Or, in the *last Place*, the *Matter* is *doubtful*, and it does *not* sufficiently appear, on Account of *some Difficulties* on *both Sides*, whether, the *Swearer* be *obliged* to perform *what* he has *promised*, or *not*; and *then*, indeed, it will be *useful* to consult *prudent* and *pious* Men, and *such* as are *skilful* in the *Divine Law*, and, according to *their Opinions*, to *determine* on *what* shall appear *necessary* or *expedient* to be *done*. Now, in *this Matter* I cannot comprehend, why the *Pope* should have a *greater Authority* or *Share* than *any other Person*, in regard, it consists *rather* in *Skilfulness* than *Power*, unless it were *certain*, that, the *Pope* excelled *all* others in *Piety* and *Prudence*, which, indeed, is *not very credible*, nor *necessary* to be *believed*. But, *Thirdly*, others, *not content* with *this declarative Power of dispensing*, because, it would *lessen* too much the *Power* of the *Pope*, have, devised an *Answer* extremely *subtil*; namely, that, in Reality, that *Obligation* of an *Oath* is *cancelled* and
taken

taken away by the Pope's (f) Dispensation, which is of *Divine Natural Right*; but, that it ought not therefore to be said, that, the Pope dispenses, both with the *divine*, and *natural Right*: Because, say they, that *Law of Nature* is *divine* which enjoins, that, an Oath should be kept so long as the *Force* and *Obligation* thereof remains; and, with this *Law* the Pope dispenses not; but, by his *Dispensation*, he only abolishes and takes away that *Force* or *Virtue* of an Oath, by which the Swearer was truly bound before such Dispensation. But, should this Subtilty be examined critically and to the Bottom, it would appear to be, either mere Trifling, and to conclude nothing at all; or else, to imply a Contradiction: Nay, (g) Achorius himself, the Jesuit, refutes it, who, for that very Reason, is severely lashed by (h) Sayrus the Monk. Thus, those Cadmean Brothers, while they destroy one another with mutual Blows, and cannot agree upon one certain Method of defending themselves, do in Reality, confess, that, the Cause which they espoused and undertook, cannot be at all defended. I therefore conclude, that, neither Pope, nor Prince, nor Synod, nor Senate, nor any ecclesiastical Prelate, nor secular Governor whatsoever, have any Right to dispense with Leagues, Contracts, or Oaths; or, to absolve any Person from that Bond or Obligation,

(f) V. Sayr. num. 10. &c. (g) Part. 1. Instit. L. 6. Cap. 1. Dub. 4. (h) Sayr. 6. cl. Reg. 11. Num. 12.

by which he was bound, before the granting of a Dispensation.

THE FIFTY-EIGHTH
CASE.

5. The next Question, or the second Case, much of the same Nature with the preceding concerning Dispensations, is that of Commutation in an Oath. Commutation, (as the Word itself shews), is no other than the Translation of an Obligation from one Matter to another; which, whether it be greater, or less, or Equivalent, seems to be, in some Respect or other, more Commodious or Advantageous. Now, Commutation differs in some Sort from a Dispensation, as a Species does from it's Genus, or a Part from it's whole. For, should the one be as sufficient as the other, to dissolve the Bond or Obligation of an Oath; then, the Bond would be totally dissolved by a Dispensation, but partly only by Commutation. The Sum, for the most Part, of the Popish Casuists Doctrine concerning Commutation is this; First, that, any private Person may, by his own Authority, without any Dispensation from a superior, Commute or Change a Vow, or an Oath; for that which is evidently better. This they confirm by the Example of God himself, who does not always literally fulfil his temporal Promises, but often changes them for better: And, to this Opinion they apply that Saying of St. Gregory, "That, a Purpose or
" Promise is not infringed by a Man that changes
" it

" it for a better. Secondly, That, a Promise cannot be changed for that which is evidently worse, or concerning which there is even a Doubt, whether it be better, without the Authority of a Superior invested with a lawful Power of judging and determining in that Respect. Thirdly, that, by Commutation, a Pre-existent Obligation is entirely abolished and taken away from a former Matter, and, a new Obligation induced or imposed upon a different Matter. But, this whole Doctrine is built upon a false Foundation, namely, upon the dispensableness of an Oath, which, since, as we have lately shewn, it cannot be admitted; the whole Superstructure of Commutations founded upon it must necessarily fall to the Ground. I affirm therefore briefly, that, the Bond or Obligation of an Oath cannot be remitted, or dissolved, either in the Whole, by a Dispensation; or in Part, by Commutation; without the Consent of all the Parties. But, the Consent of Him to whom the Oath is taken is, in a more particular Manner, requisite; because, He thereby acquires a Right, which ought not to be taken from him, without his own Consent. The Example, drawn from God upon this Occasion, is neither parallel nor just: Because, as the Promises of God are all, in General, gracious and free; so, his temporal Promises, in Particular, are Conditional, and to be understood with the Exception of the Cross; of his good Pleasure; and, of our Benefit and Advantage.

antage. Nor, is the *Case* of a *Vow* and of an *Oath*, with *Regard* to *Commutation*, in all *Respects*, *similar*, or the *same*. For, since a *Vow* is solemnly made to *God alone*, the *Person* that makes *such Vow* may perhaps be *allowed some Liberty* to *change* it for *what* may be *evidently better*, and *more acceptable* to *God*; in *Regard*, *no Injury* can, by *such Change*, be *done* to *any third Person*. But, in an *Oath* taken to a *Man*, (i) an *Injury* would *certainly* be *done* him, should the *Thing* *promised* be *changed* for any *other Thing*, without *his Consent*, and *contrary* to his *Will*. Thus, should *Caius*, being *sworn* to pay *Titius* the *Sum* of *ten Pounds*, give him a *Horse* valued at the *Price* of *ten Pounds*; He would *not* be deemed to have *fulfilled* his *Oath*. For, it is *unjust* to *compel any Man* to *change* a *Debt* that is *due* to him, for *any other Thing*, *contrary* to his *Inclination*. Therefore, by *neither* of *these Ways* or *Means*, can the *Bond* of an *Oath* be *dissolved*, nor the *Obligation* thereof *cancelled* and *taken away*.

6. But, it seems, the *Obligation* of an *Oath* may be *dissolved* or *taken away*, by either of these *three Ways* that remain yet to be treated of, namely, by the *Irritation* of a *Superior*; by the *Cessation* of the *Matter*; and, by the *Re-*

(i) *Nemo potest mutare consilium in alterius injuriam. L. 75. de div. reg. jur.*

laxation of the *Party*. The *third Case*, therefore, is, concerning the *Solution* of the *Bond* or *Obligation* of an *Oath* by the *Irritation* of a *Superior*. *Irritation*, (if I may be allowed to speak in the *barbarous* Language of the *Casuits*,) signifies “ that *Act* of a *lawful Superior*, by which he *disannuls* or *makes void*, by his *own* Authority, an *Oath* taken by a *Subject*, without his *Consent*. Now, *Moses*, in this (k) Chapter, copiously instructs us, that, a *lawful Superior* may *break* or *make void* the *Vows* and *Oaths* of *those*, who are under his *Power*, and *not* at their *own* Liberty; as we have *before* (l) shewn, where we treated of the *efficient Cause* of an *Oath*. The *Reason* is, that *He*, who is under the *Power* of *another*, is *not* at his *own* Liberty, nor, has he a *Power* of *binding himself* with *Regard* to *those* Things wherein he is *Subject*, without the *Consent* of his *Superior*, to *whom* he is *Subject*; and, consequently, ought *not*, by *any* *Act* of his *own*, to induce an *Obligation* upon *himself*, without the *express*, or *reasonably presumed* *Consent*, of such *Superior*. For, the *Rights* of *Governors* over their *Subjects* are, according to the *fixed* and *eternal* *Law* of *God*, *immutable* and *perpetual*; and likewise, the *Duties* of *Subjects* to their *Governors*, together with their *Obligation* of *Subjection* and *Obedience* to them, are, according to

(k) Num. 10.

(l) Præl. 4. N. 5.

the same immutable Law, of perpetual and indispensable Obligation. Now, this antecedent Obligation, (according to our third Hypothesis), impedes or obstructs the Effect of a subsequent Oath, so as to hinder it from being obligatory: For, a prior Obligation always takes Place of, or makes void a Posterior, and annuls every Act that is inductive of a new Obligation contrary to itself. We must, therefore, in this Case affirm, First, that, a Subject or Inferior ought not, with Regard to those Things wherein he is subject to another, to take an Oath to do any Thing, at least, without the presumed Consent of his Superior. Secondly, That, if he has taken his Oath, and the Thing was Lawful, He is bound to the Performance of it, while it appears not to be contrary to the Will, Dignity, or Benefit of his Superior. Thirdly, That, if a Superior has once, by his express Consent, whether antecedent or subsequent, confirmed the Promise of his Subject, he (m) cannot afterwards make it void, or cancel it's Obligation. Fourthly, That, should a Superior, so soon as ever he comes to know of a Matter sworn by his Subject, immediately, openly, and peremptorily, signify his Dissent to him concerning it, and prohibit the Performance of what he has sworn; the transitory Obligation of such an Oath immediately ceases; and, the Subject,

(m) Quod semel placuit, amplius displicere non potest. 21. reg. Jur. in 9.

by Virtue of the *Obligation* which he lies under to perform his *Dnty* to his *Superior*, which is *permanent* and *perpetual*, is bound to Act otherwise, or, in *Contradiction* to what he has sworn. Hence it is, that, should one Person who is *subject* to the Power of another, suppose of a *Master*, or *Father*, or *Prince*, either of his own *Accord*, or compelled thereto by *Force* or *Fear*, happen to take an *Oath* to which he believes his *Master*, *Father*, or *Prince*, if present, would not have consented, such Person has committed a *Sin* by the taking such *Oath* against his *bounden Duty*, and, is not at all obliged to keep it, as being contrary to it. Therefore, it must be concluded and determined, that, the *Bond* or *Obligation* of an *Oath* may be dissolved or cancelled by the *Irritation* or *disannulling* of a lawful *Superior*.

7. The fourth Case, is, concerning the *Solution* of the *Bond* or *Obligation* of an *Oath* by the *Cessation* of the *Matter*, or, by some notable *Change* or *considerable Alteration* made, with Respect to the *principal Cause* of an *Oath*. Now, the *Matter* of an *Oath* must then be deemed to have ceased, when the *State* or *Condition* of Things is so altered, betwixt the *Time* of *swearing* and the *Time* of *Performance*, that, if at the *Time* of taking such *Oath* the *Condition* of Affairs which afterwards ensued could have been foreseen, the *Oath* would not have been taken at all. In this Case, this short Answer may be given, that,

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CASE.

whensoever the *Matter* of an *Oath*, of a *Vow*, or *Promise*, ceases; the *Obligation* ceases also together with it. As, in Things *natural* and *artificial*, whensoever the *Matter* fails, the *Action* of the Agent must necessarily fail or be defective likewise. The *Fire* cannot burn without *combustible* Matter. Nor, can a *Carpenter* make a *Bench* without *Wood*. Should, therefore, a *Soldier* in Time of War swear *Obedience* to his *General*; as soon as the War is ended, and he ceases to be *General*, such *Soldier* is not by his *Oath* obliged to yield any further *Obedience* to him. And, should a *Father* swear, that, he would never alter his *Will*, in which he had constituted his *Son* his *Heir*; but yet, should afterwards discover, that, such *Son* and intended-*Heir* had designed to *poison* him; such *Father* is not bound, but may, notwithstanding such *Oath*, alter his *Will*, and appoint another to be his *Heir*. The same Thing must also be affirmed, when a Man swears to observe the *Statutes* of some *College* or *Community*, which are read to him. For, should such *Statutes* happen to be *revoked* or *abrogated*; the *Swearer* would be free from the *Bond* or *Obligation* of his *Oath*. The Reason is, because, when the *Root* of an *Obligation* is removed and taken away, the *Branch*, or *Obligation* springing from it, must be taken away together with it. Now, the *Matter*, which was the *Cause* of the *Oath*, was the

Root

Root or Foundation of the Obligation which arose from it. For, an Oath always (n) follows the Nature and Condition of the Act to which it is annexed, that is, of the Matter, about which it is employed, in the same Manner, that an (o) Accessary always follows the Nature of its Principal; and as Civilians tell us, "those Things, which obtain the Place of Accessories, are extinguished and abolished, when the principal Things themselves are destroyed and perished.

8. The last Case, is concerning the Solution of the Bond or Obligation of an Oath,

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by the Relaxation of the Party, that is, of the Person to whom the Oath is taken. Thus, in case, Caius should promise Titius something; would Caius, upon Titius's remitting the Obligation, be freed from, and released of, his Promise? Here we must, in the first Place, observe, that, these two Ways of Speaking, namely, "to remit an Oath, and this other like it, "to favour or excuse an Oath, are not always understood in the same Sense by good Authors. For, they are sometimes understood with Relation to an Oath hereafter to be taken; and so, he is said to remit or excuse an Oath who, when the other is ready to Swear, being content with his Inclination only, does not require an express Oath from him; but, believes him without swearing; or,

(n) 42. Reg. Jur. in Sexto.

(o) L. ff. pecul. legat.

who, for some other Reason, does not require an Oath from a Person, from whom he has a Right to demand it. Yet, these Forms of speaking are, for the most Part, understood with Relation to an Oath already taken; and so, He is said to remit, or excuse an Oath, who forgives a Man that which he has promised, and requires not a Thing due to him by Virtue of his Oath, though he has a Right to require it. Thus, Suetonius says of Tiberius, (2) “That, he excused
 “ the Oath of a Roman Knight, or granted
 “ him Power to be divorced from his Lady
 “ whom he had taken in the Act of Adultery
 “ with his Son-in-Law, though he had before
 “ sworn never to repudiate, or put her away.”
 And, the Emperors (3) Antoninus and Verus, in their Rescripts, declare, (q) “That, they would
 “ dispense with, or excuse a certain Person from
 “ performing his Oath, who had sworn never to
 “ be present at the Assemblies of the Duumviri,
 “ and yet was afterwards created one of that
 “ Order himself.”—And, this Remission, or excusing of an Oath, is that, which is by the *Cassists* called, “a Relaxation.” Now, as to

(2) The Reason assigned for this, was, “That, the Oath could not be so far extended as to reach the present Case, where the Wife, by so infamous a Crime, had rendered herself unworthy of cohabiting any longer with her Husband. (Suet. in Tib. cap. 35.)

(3) The Reason given for this, was, “Because, a Subject cannot
 “ by any Oath of his withhold his Service, when required by the
 “ Commonwealth.”

(q) L. xxxviii. ad Municipal.

this,

this, I affirm, First, That, such Relaxation takes place only in Oaths, Leagues, Covenants, and other human Contracts; but, not in Vows. The Reason of the Difference is this, that, Vows are made to God, as to a Party; but, those Engagements can be released by Man only which are made to Man. Secondly, I affirm, that, should an Oath be taken in Favour of another, that is, out of regard to his Honour, Service, Profit, or any other Advantage; such Oath is not obligatory, unless the Person, in whose Favour it was taken, should be pleased to accept of, and confirm, it. Thus, in the Interpretation of the Law of our own Country; a Bond, payable to Titius for the Sum of an hundred Pounds, does not oblige Caius though given under his Hand and Seal, unless Caius should deliver it also to Titius; and Titius, or some other Person in his Name and Stead, should accept of it when so delivered. Thirdly, I affirm, That, an Oath so taken, if the Person, to whom it is sworn, ratifies, and would have it observed, cannot be relaxed by any (r) third Person whatsoever. The Reason, is, because, no Man can take away a Right acquired by another without his Consent. From hence, that which we before affirmed follows; namely, that, the Obligation of an Oath is not cancelled by the Dispensation of a third Per-

(r) Non debet alii nocere, quod inter alios Actum est. L. 10. ff. de Jurejur.

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son, without the *Consent* of the *Parties*. *Fourthly*, I affirm, that, if the Person, to *whom* the *Oath* is *taken*, should *remit* the *Oath*, and would *not* have it kept; *then*, the *Swearer* is forthwith *discharged* of his *Obligation*, and is *not* in *Conscience* bound to *perform* what he had *before* sworn he would perform. Therefore, should *Caius* swear to *Titius*, that, he would pay him the Sum of an hundred Pounds; and, should *Titius* afterwards *forgive* him the Debt; *Caius* is *no* longer bound by *such* *Oath*. The *Reason*, is, because, *any* Man may *recede* from his *own* Right, and *bestow* to, or *release* another of, a Debt due to *himself*. For, the Debt being paid, (s) the *Obligation* must *absolutely* and *necessarily* cease; in regard, the *End* of the *Obligation* is the *Payment* of the Debt, as has been *already* shewn from the *Definition* of an *Obligation*. Thus, amongst us, it is evident from the *very Form* of an *obligatory Bond*, that, upon *Payment* of the *Money*, the *Obligation* is *cancelled* and *dissolved*. If you should say, that, the Debt in *this* Case is *not* paid; because, the *Promise* is *not* fulfilled; I answer, that, to *all* Intents and Purposes in *Law*, it is the *very same* Thing, whether it be *really* fulfilled, or be *deemed* and looked upon *as* fulfilled, by the Person *chiefly* concerned and interested therein. The *Reason* is, because, the *Acceptation* of *Him* that is *interested*, or concerned

(s) Tollitur omnis Obligatio Solutione ejus quod debetur. L. 1, Instit. quibus Modis toll. Oblig.

therein,

therein, is, by Interpretation, an *Acceptance*, or *Payment of the Thing*; and therefore, upon the *ceasing*, as it were, of the *Matter*, the *Obligation* also *ceases*, almost in the *same* Manner, as was mentioned in the Case *last* preceding. And, *this* is, what the *Civilians* call, *(t)* *Acceptilation*, by which they inform us, (although, it be only a *civil*, and not a *true Solution*), that, an *Obligation* may be as effectually *cancelled*, as by a *real* and *true Solution*, or *Discharge*. If you should again reply, that, as an *Obligation* entered into with *Man* may be *cancelled* by a *Relaxation*; yet, that, an *Obligation* contracted with regard to *God*, cannot; as has been *before* asserted in our *Answer* to the Case of an *Oath* extorted by *Fear*. To *this* I answer, that, by a *Relaxation* of the *Bond* or *Obligation* of an *Oath* in the Manner *now* mentioned, *no* Injury can be done to *God*, as is done in the Case of the *Violation* of an *Oath* extorted by *Fear*; because, the *Promise* made precisely in Favour of *another* Person is directed to *God* alone, as to a *Witness* of the *Promise* made to *such* Person, and, as to an *Avenger* of the *Breach* of that *Faith* which is *plighted* to *another*. But, since *such* Person did *not* violate that *Faith*, but made good his *Promise*, he is *entirely* discharged from *all* *Obligation*, both with Regard to *God* and *Man*. *Fifthly*, I affirm,

(t) Est Acceptilatio imaginaria Solutio. ibid. V. Tit. de Acceptil. ff. 46. 5. & L. 1. Instit. 3. 10.

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that, the *Solution* of the *Bond*, or *Obligation*, by the *Relaxation* of the *Party*, extends as far as the *Party* relaxing pleases. Thus, if *Caius* should swear to pay *Titius* the Sum of an hundred Pounds; but, *Titius* should afterwards think proper to remit him *Fifty* thereof, the *Obligation* is discharged (u) in *Part* only, but not in the *Whole*; that is, the *Bond* is discharged, as to the *fifty* Pounds that are remitted; but, remains in *Force*, as to the other *Fifty* unremitted. Again, should *Caius* swear to pay *Titius* the Sum of an hundred Pounds within the Space of *twenty* Days; but, *Titius*, upon seeing, that *Caius* could not pay the *Money* at the *Day* appointed without doing himself some *Prejudice*, should give him *twenty* Days more for the *Payment* of it: *This Relaxation* made by the *Putting off*, or *Prorogation* of the *Time*, so far dissolves the *Bond* of the *Oath*, as that he shall not be obliged to pay the *Money* within *twenty* Days as he swore at first; yet, shall he be bound, and that by the *Bond* or *Obligation* of the *First Oath*, to pay it within *forty* Days. Sixthly, I affirm, that, the *Relaxation* of the *Party* is sufficient to dissolve the *Bond* of an *Oath* so far only as he himself is interested therein; but yet, cannot do it to the *Prejudice* of a *third* Person. The *Reason* is, because, every Man may, by his own *Act*, remit as much as he pleases of his own *Right*; but, no Man

(u) In parte Debiti Acceptilatio fieri potest. L. 1. Instit. 3. 10.

can take away any Thing that is the *Right* of another, either *without* his *Leave*, or *against* his *Will*. Every Man, therefore, ought in *such* Manner to *depart* from his *own* Right, as that, at the *same* Time, the *Right* of every other Person may be *preserved*. Thus, *Abraham*, after He had returned *Victorious* over the *Four Kings*, as we may read in the 14th Chapter of *Genesis*, departed from (x) his *own* Right to the *Goods* which he had acquired by *Right of War*, when He made a *Present* of *all* his Part of the *Prey* to the *King of Sodom*, reserving at the *same* Time the just Proportion that fell to the *three Generals* that were his *Allies* in the *War*. Now, from hence it appears, that, should *Caius* swear to pay *Titius* and *Julius* the Sum of an hundred Pounds; if *Titius* should *remit* him his Part of the Debt, He is discharged from the *Bond* or *Obligation* of his *Oath*, as to *that* Part which was due to *Titius* only; but, the *Obligation* still remains, as to the Part due to *Julius*. Upon the *same* Foundation it is, that, the *Relaxation* of the *Parties*, by *Consent*, is of no *Validity* in *Contracts* of *Marriage*; because, in such Cases, the *Benefit* and *Advantage* of *Man* is not only to be considered; but also, the *Institution*, or *Ordinance* of *God*, to whom a great *Injury* would be done, should such *Contracts*, though by the *common* *Consent* of the *Parties*, be *violated* and *broken*:

(x) Gen. xiv. 22. — 24.

Because,

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Because, The *Virtue* and *Efficacy*, which the *Relaxation* we now treat of, carries with it to cancel an *Obligation*, supposes the *Act* that induced the *Obligation* to have Respect to no other Thing, beside the *Good* and *Advantage* of the relaxing Party alone. But, should it be the *Interest* of any other Person, on Account of some *Right* belonging to him, that, the *Obligation* should not be cancelled or dissolved; such *Obligation* is not discharged, but continues still in Force.

9. The *Sum*, therefore, of what has been hitherto said concerning the *Solution* of the *Bond* or *Obligation* of an *Oath* is briefly this, "That, the *Bond* of an *Oath* can neither be dissolved by the *Dispensation* of any *Superior*; nor, by any *Kind* of *Commutation*; but, that the *Swearer* must still continue bound in *Conscience* to perform what he has promised; yet, notwithstanding this, that, such *Bond* or *Obligation* may be broken and rendered void by the *Authority* of a *Superior* invested with *lawful Power*; or, may cease upon the ceasing of the *Matter* thereof; or, may be relaxed by the *Person* to whom the *Promise* is made in such Manner as entirely to lose it's obligatory Force and *Virtue*.

Thus, having, at last, (by God's Assistance), finished, to the utmost of my slender Ability, the *Treatise* I promised when I first entered upon this Office of *Public Professor*, with as much *Brevity*,
Perspicuity,

Perspicuity, and Faithfulness as I could; I shall now beg leave, instead of a Conclusion, to add some few *Admonitions* concerning the *Use and Abuse of Oaths*, in the Nature of *Corollaries*, which may be of some Use to us, for the *Institution* of our *Lives*, and the *Information* of our *Consciences*: And, *this* I shall do, *not* by Way of *Exhortation*, as *sacred Orators* are wont to do, in their *Sermons* to the *People*, being mindful, that, we are *instructing* in a *School*, and *not* in a *Church*; but, by Way of *Theses*, or *Practical Conclusions*, *briefly* proposed, and *clearly* explained.

10. The *first Conclusion*, is, in *Opposition* both to the *Anabaptists* and *Socinians*, namely, (4)
“*That,*

(4) Had the *Quakers* existed when the *learned Author* wrote these *Lectures*, he would, *no* Doubt, have ranked them with the *Socinians* and *Anabaptists*, the *same* Arguments from *Scripture*, and *Antiquity* being *equally* conclusive against them, as well as from *Reason*. But, about *this* Time it was, that *these* People began to form themselves into a *Seç*, which, tho' contemptible in the *Beginning*, have yet grown to be considerable in the *World*, notwithstanding the *Falsity* and *Absurdity* of some of their *Tenets*; among which, “the *Unlawfulness* of taking any *Oaths* at all, must ever be deemed one, by all rational unprejudiced Men. For, the *Interest* and *common Quiet* of every *Society* evidently requires, that, the *Safety*, *Peace*, and *Welfare* of all it's Members should be *duly* promoted, upheld, and preserved; and, in order to obtain *this* great End, is it not necessary, absolutely necessary, that, all it's *Laws* should be faithfully observed; that, *Justice* should be impartially administered; that, all *Offices* and *Trusts*, serviceable to the *Public*, should be uprightly discharged; that, all *Contracts* should be exactly kept and performed; all *Controversies* about the *Interest* of Men be fairly determined; that, the *Safety* of it's *Governors* should be preserved,
and

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That, the Use of Oaths is lawful. This is proved, First, from the Use and Practice of them under the old Testament. The pious (x) Patriarchs took Oaths. (y) Moses, in his Law, ordered

(x) Gen. xiv. 22. & 26. 51. & 31. 53. (y) Exod. xxii. 11. and the Obedience due to them maintained secure, by the strictest Ties of Allegiance; and, in a Word, that, all Affairs of Moment and Importance should be transacted among Men with Satisfaction of Mind, and mutual Confidence?

Now, since Conscience, or a Sense of Duty towards God, quickened by a Hope of his Rewards, or a Fear of his Punishments, is what can oblige Men to perform what is Right and Equal; and, since Experience puts it out of Question, that no worldly Consideration whatsoever is strong enough to hold Men fast, or can dispose many to do Right, to keep Faith, and live peaceably, further than Appetite, Interest, or Humour sway them; and, since no human Laws can reach Men's Consciences and bidden Practices; must it not follow, that, for the Benefit of human Society, the highest Obligation possible should be constantly made use of and enjoined it's Members for the Preservation and Good of the Whole? And, since Oaths are the strongest that can be laid on the Consciences of Men, to engage them to Fidelity and Constancy in all Cases, and the most effectual Instruments to promote and preserve them; it follows, that, human Society must suffer incredible Mischiefs, as well by the Want of Oaths, as by the dissolving, breaking, and contemning them upon every pretended Occasion: And therefore, the Necessity of human Affairs plainly demonstrates the lawfulness of Oaths, since there neither is, nor can be any Security equal, or comparable to them among Men. And if so, then, by Consequence, the Quakers, who condemn all Oaths as unlawful, even in judicial Matters, and on the most solemn and important Occasions, are fallen into a gross and palpable Error.

But, beside the Inconvenience of this Doctrine to human Society, Arch-bishop Tillotson very justly observes, "That, it is very pre-judicial, even to them that hold it. It renders them suspected to Government, and in many Cases incapable of the common Benefits of Justice, and other Privileges of human Society; and exposeth them to great Penalties, as the Constitution of all Laws and Governments at present is; and, it is not easy to imagine, how they should be otherwise. And, which is very considerable

ordered Controversies to be decided by an Oath. And, the (2) Prophets prescribed the Conditions, that were to be observed in swearing. Nor, can there any one just Reason be assigned, why the pious under the old Testament might lawfully Swear, but the Faithful under the New may not; since it is Evident, that, an Oath belongs not to the ceremonial Law which was to be abrogated by Christ, not only from the End thereof which is of perpetual Use, but also, from it's Form, which seems to have nothing common with it's Type or Figure. Secondly, it is proved by the Example of (a) God himself; of (b) Angels; and, of the (c) Apostles: The two Former of whom are often introduced, in the sacred Writings, as swearing after the Manner of Men; and the Latter, historically, and, as Occasion required. Thirdly, it is proved from the Custom of all Nations, who, by the very Light of Nature, have been led to Think, that, the religious Ty of an Oath ought to be used for the Confirmation

(2) Jerem. iv. 2. (a) Gen. xxii. 16. Psal. cxl. 3. Heb. 6. 7.

(b) Dan. xii. 7. Apoc. 10. 6. (c) Rom. i. 9. & 9. 1.

“ able in this Matter, it sets those who refuse Oaths upon very unequal Terms with the rest of Mankind, if where the Estates and Lives of Men are equally concerned, their bare Testimonies shall be admitted without an Oath, and others shall be obliged to speak upon Oath: Nothing being more certain in Experience, than that many Men will lie for their Interest, when they will not be perjured; God having planted in the natural Consciences of Men a secret Dread of Perjury above most other Sins. And, this Inconvenience is so great, as to render those, who refuse Oaths in all Cases, almost intolerable to human Society.” (Vol. 1st. fol. p. 243.)

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of Faith, to the great Benefit and Advantage of civil Society; than which there can be no more certain Sign of it's being "a Law of Nature. Fourthly, it is proved from the End of an Oath, which is, the Confirmation of Faith in doubtful Matters, where other Proofs are deficient. Now, since this End is Necessary in order to abolish and determine Controversies, the Means also that are necessary to obtain such End must, of Necessity, be Lawful. Fifthly, it is proved from the very Nature of an Oath, which contains nothing in it that is intrinsically Evil. For, neither is an Act of Religion, Evil; nor, is the Confirmation of a doubtful Matter, Evil; nor, is the calling of God to Witness, Evil; of which, as of integrating Members, the essential Definition of an Oath is composed.

11. The Second Conclusion, is, "That, the Practice of swearing in common Discourse is unlawful. This is proved, First, from the Nature of an Oath; because, every religious Act, in regard it is Part of God's Worship, ought to be performed with due Reverence, and, as well with some Preparation, as Attention of Mind. Now, all these must necessarily be wanting, when Oaths are taken rashly and without Judgment, or drop from People without Thought or Consideration. Secondly, It is proved from the End of an Oath, which is, "the Confirmation of a doubtful Matter. But, in common Conversation trifling Mat-
ters

ters are generally talked of, which, either are not doubtful, or, not of so great Importance as to stand in need of a religious Confirmation. Or, in Case they were of so great Importance as to need it; yet, the Belief of them would not be much better established with the Parties concerned (d) by the Oath of that Man who swears rashly and abundantly upon every Occasion. For, such a one is regarded by most People as a Person, who may be either believed without taking any Oath at all, if thought to speak Truth; or, not believed, though sworn, if thought to speak Falsehood. Thirdly, It is proved from the very Cause from whence such Oaths commonly flow, that is, either from a vitious Habit contracted by long Use and desperately wicked Custom, which is the Product and Indication of a Prophane, I had almost said, of an atheistical Heart; or else, from some violent Passion of the Mind, such as from unruly Anger, or intemperate Joy, which so fire Men's Minds, that, they readily foam out Oaths, to the great Affront and Reproach of God. To this Matter the Words of St. James, in the 5th Chapter and 12th Verse of his Epistle, seem to me to relate in a particular Manner, "above all Things, says he, swear not, either by Heaven, or by Earth, &c." For, in some Verses immediately preceding, he had exhorted the Faithful to bear Injuries with Patience; and, in the

(d) Οὐκ ἀνδρὸς ὅρκου πιστεύει, ἀλλ' ὅρκου ἀνθρώπου. Æsch. apud Stobæ. Serm. 27.

Verse following, *He* informs them, how a *Christian* ought to *behave* and employ himself, whether in *Grief*, or in *Joy*. A Passage *this*, which, indeed, deserves the Pains of the *Learned* to explain it; in regard, the *Seope* and *Force* thereof may, from the *Order* of the Words, be somewhat *more* accurately traced and discovered, than has yet been done by Interpreters. Perhaps, it may, (by the bye), receive *some* Light from *what* follows, which, in *my* Apprehension, is a *Paraphrase* of the *Apostle's* Words. " Lay before
 " your Eyes the *Examples* of the ancient *Pro-*
 " *phets*, and of *pious* Men. If ye suffer any *E-*
 " *vil*, or *Affliction*, imitate *their* Patience. If
 " ye cannot attain to *that* *Perfection*; yet, *above*
 " *all* Things take care of *this*, which, if ye
 " have *not* a Mind to be *very* negligent, ye may
 " *very* *easily* guard against; namely, *not* to be,
 " on the *one* Hand, *too* *impatient* in *Sorrow*;
 " nor, on the *other*, *too* *much* *elated* with *Joy*,
 " *so* as *rashly* to *swear*, ye will do *any* Thing
 " unworthy of the *Name* of a *Christian*; or,
 " that may *Reproach* or *Affront* the *Majesty* of
 " *God*. But, whether ye be moved or affected
 " by *Grief*, or *Joy*, contain yourselves within
 " the *just* *Bounds* of *Modesty*, and confound not
 " *Earth* with *Heaven*, nor fill *all* Places with
 " *Oaths* and *Clamour*; but, with *Minds* *calm*
 " and *serene*, *nakedly* and *simply* affirm what-
 " ever it is incumbent upon you to affirm; and,
 " *nakedly*

“ nakedly and simply deny whatsoever ye must
 “ deny. But, should the fiercer Impetuosity of
 “ your Mind, with respect to either, not bear
 “ to be pent up within the narrow Compass of
 “ your Breasts, but strive some Way to vent it-
 “ self; it will then be prudent in you to turn
 “ that Ardor of your Minds to the Honour of
 “ God. But, by what Art, you will ask, may
 “ this be done? I will tell you. “ Is any a-
 “ mong you afflicted?” Let him not, through Im-
 “ patience, burst out immediately into Oaths and
 “ Blasphemies, which those who boil with Rage
 “ are too prone to do; but, let him rather pray
 “ and beseech God to grant him Patience, till
 “ such Evils or Afflictions be removed. “ Is
 “ any merry?” Let him not give himself a Loose
 “ to swearing, as Madmen use to do; but, let
 “ him rather sing Hymns and Psalms to the
 “ Praise of God, who has graciously vouchsafed
 “ him such happy Days.” Should any Man be
 inclined to understand the Words of the *Apostle*
 in a plainer, or simpler Manner, He is at Liber-
 ty to use his own Judgment and Discretion. For
 my Part, I have only laid before you what ap-
 pears to me not to be improbable; but, would,
 by no Means, be thought to impose a Law upon
 any one. But, to return to the Point, if I may
 be said to have digressed. It is, in the mean
 Time certain, that, those Words of St. James do
 entirely condemn that wicked Custom of swearing,

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which has long and universally prevailed among Men of the highest, as well as lowest, Stations. I might fill many Pages, should I heap up together all that is to be met with against this wicked Custom in the Writings of the First Fathers, and ancient Learned Men of all Nations, whether Jews, Greeks, or Latins, yea, or Heathens themselves. But, I shall only mention one or two, out of many. Among the Jews, the wise Son of Syrach says, (e) “Accustom not thy Mouth to swearing—As a Servant, that is continually beaten, shall not be without a blue Mark; So, he that sweareth and nameth God continually, shall not be faultless. A Man that useth much swearing shall be filled with Iniquity. Among the Greeks, Eusebius, the Gentile Philosopher, speaks thus, (f) “Many, says he, advise Men “to swear the Truth; but, I am of Opinion, “that, they should not easily swear at all.” Among the Latins, St. Augustine says, (g) “Beware of Oaths as much as you possibly can; “for, it is best not to swear, even the Truth; “not, because it is a Sin to swear Truth; but, “because, it is a very great one, to swear falsely. By how much the more a Man has accustomed himself to swear, by so much the sooner “does he fall into Sin.” And, in another Place, (h) “A false Oath is destructive; yea, and

(e) Ecclesiasticus xxiii. Chap. V. 9, 10, 11.

(f) Apud Stob. Serm. 37.

(g) Lib. 1. de Serm. in Dom. Mont.

(h) In Psalm.

"even a true one, is dangerous." But, what need we produce any other Testimonies, when there is scarcely any one Thing more expressly forbidden in the *Sacred Writings* than this common and unnecessary Custom of swearing; and that too, by Christ himself; "But, I say unto you, swear not at all;" and, by his blessed Apostle St. James, in the Place now cited, "Above all Things, my Brethren, swear not."

12. The Third Conclusion, is, "That, an Oath ought not to be taken, without a just, important, and necessary Cause." An Oath is of that Kind of Things, which are neither Evil in themselves, such as, are the Acts of Theft, Murder, Sacrilege, Perjury, and of all other Vices: Nor, of those which are desirable of themselves, such as are "the Acts of Charity, Justice, Obedience, and of all Virtues; but, which are therefore (i) Good, because, necessary; that is, according to our Hypothesis, necessary to some End: Nor, are they desirable, but in order to such End. Now, of this Nature are all those Things that are ordained or appointed to remedy some Defect, as Medicine, or, the Art of Physick. For, as a medicinal Composition is not invented, or found out for itself, but for the Sake of Health; nor, would there be any use thereof, if human Bodies were not subject to Diseases;

(i) Non in bonis, id est, per se Expetendis, sed in Necessariis jurationem habendam. Aug. 1. de Serm. 30.

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whence comes that Saying, (k) "*Honour the Physician for Necessity's Sake*; so, an Oath is instituted for the Confirmation of Faith among Men; nor, would there be any Use or Occasion for it, if Mankind were not, alas! too subject to Ignorance, Perfidiousness, and Deceit: And, to this perhaps it is, that the following Expression of our Saviour relates, "*For, (l) whatsoever is more than these, cometh of Evil*. Therefore, as the Use of Medicine is to be avoided, when it does not appear to be, in some Sort, necessary for the Preservation of Life and Health; so likewise, an Oath ought to be avoided, when the (m) Necessity of preserving human Society; the Manifestation of Truth; and the Confirmation of Faith, do not appear, in some Manner or other, importunately to require it. That Admonition of Epictetus, (as, indeed, every Thing said by that Stoic), is very salutary, (n) "*If it be possible, avoid swearing altogether; but, if you cannot do that absolutely; yet, be sure to decline it, as much as you possibly can*." An Oath is a sacred Thing; but, by how much the more sacred, by so much the more dangerous is it, should it be unduly taken. Thus, Physick, the more Strength and Virtue it contains, the more Prejudice will it do the Body, if rashly and unskilfully administered

(k) Sirac. xxxviii. 1.

(l) Mat. v. 37.

(m) In totum Jurare, nisi ubi necesse est, gravi Viro parum convenit. Quint. 9. Instit. 2.

(n) Cap. 44. in Ench.

and used. An assertory Oath is extremely useful in the Commonwealth, especially in the Public Courts of Justice, for lifting out the Truth about particular Facts; and, to this Head, the Oaths of Witnesses, of Calumny, and Compurgation, belong. But, in extrajudicial and private Affairs, it is not so frequently used; however, it may sometimes be necessary even in them, that is, when it is of great Consequence, that, what is asserted should be believed; and, when the Person, that asserts it, will not be credited without swearing. A promissory Oath is not at all useful in Courts of Justice; but, is very useful extrajudicially, as well in public as private Affairs. It is, in the first Place, publicly useful to preserve Subjects in their Allegiance to their Princes; to confirm the Leagues and Contracts of Kings and Commonwealths; to preserve Laws and Statutes; and consequently, the Honour, the Order, and Peace of Colleges and Societies; to administer faithfully the public Offices and Employments of the State, with many other Things of a similar Nature. This Kind of Oath has also been very often used by the Ancients to confirm private Contracts, such as those concerning the Performance of a Bargain betwixt Seller and Buyer; the Payment of Debts; the Restoring of Pledges; concerning borrowing, lending, and committing Things to a Man's Trust in order to be disposed of to certain Uses. But, in most private

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Transactions, other Measures may be taken with less Scruple of Conscience, and, perhaps, more effectual too than Oaths to guard against the *Perfidiousness* of Men; such as, *Pledges, Sureties, Bonds, Witnesses*, and other Things that induce an *Obligation* in the *external Courts*. And, where these can be conveniently made use of, it is much better to abstain from Oaths altogether, lest, by swearing frequently and upon trifling Occasions, a Thing in itself most sacred should be, by being too familiarly used, grow into Contempt; or lest, while we swear much and often, we sometimes fall into the Crime of *Perjury*. *St. Augustine*, therefore, justly observes, "That, no Man knows, beside the Person that has experienced it, how difficult a Thing it is, to abolish the Custom of swearing; and therefore, that, he ought not rashly and often to do that, which Necessity sometimes compels him to do."

13. The fourth Conclusion, is, "That, it is a great and grievous Sin unduly to exact, or require an Oath from another. Now, He, in the first Place, may be said unduly to exact it, who compels any one to take an Oath, that is neither established by written Laws, nor received by Custom, that is, by Use, and confirmed by a long Prescription of Time without any Intermision or Contradiction. Secondly, He does the same, who exacts an Oath from another, which is plainly repugnant, or which, according to

to the *Sense* which the Words themselves import pursuant to the *common Use of Speech*, seems to be repugnant to some Oath justly and lawfully taken before by him. *Thirdly*, who compels one to swear to a Thing unlawful, that is, to a Thing which is contrary to his Duty to God, or to his Superiors; or, contrary to the Laws of the Kingdom; to good Morals; or, that is, in any other Respect, dishonest, and ought not to be observed. *Fourthly*, who administers an Oath of doubtful Signification, or, in any Respect, captious, by which he may ensnare the Conscience, the Life, Liberty, or Fortune of his Neighbour. *Fifthly*, who, without Necessity, compels another Person through Fear, forces him by his Authority, or induces him by his Advice, Example, Craft, or, any other Artifice or Means whatsoever, to take an Oath, which he knows such other Person must take, contrary to the Judgment of his own Conscience. I heartily wish, all those that are in great Power would call to Mind, how foul and indelible a Stain Jeroboam the Son of Nebat brought upon his own Conscience, upon his Fame, and Name, by enticing the People of Israel to Sin: And, how grievously they provoke the Anger of God against themselves, who abuse that Power to the Ruin of others, which he gave them for the Edification, and not the Destruction of Mankind.

14. The *fifth Conclusion*, is, “*That, an Oath, tendered by any one, is not to be taken with a reluctant, or doubting Conscience.*” This is proved, *First*, because, (o) *Whatsoever is not of Faith is Sin.* *Secondly*, because, an *Oath* ought to be taken (p) *in Judgment*; which certainly is not done by him, who swears *contrary to the Judgment of his own Conscience.* *Thirdly*, because, *such Oath* must necessarily be taken upon a *Prospect of some temporal Advantage, or, to avoid some Loss; or, to procure some Gain; or, to obtain some Man's Favour; or, some other Thing of the like Nature.* But, how *base and unworthy* is it in a *Christian* to esteem *God less than the World; Heaven less than the Earth; the Soul less than the Body; the Hope of a future Life less than a present Life of Ease; and internal, less than external Peace?* *Fourthly*, because, *He that takes such Oath* evidently *exposes* himself to the *Danger of Perjury*, which is a *very great and grievous Sin.* For, *He*, who can, by the *Hope or Fear* of any *temporal Advantage or Disadvantage*, be induced to *swear* what he ought *not*, cannot but be thought *capable* of being induced, by the *like Motives of Hope or Fear*, *not* to perform what he has *already sworn.* *Perjury* was, by the *Heathens themselves*, ranked among those *most grievous Crimes*, which were *believed* to pull down the

(o) Rom. xiv. 13.

(p) Jerem. iv. 2.

Anger and Vengeance of the immortal Gods, not only upon the *Guilty*; but also, upon their *Posterity* and *Race*; yea, and upon *whole Nations* and *Kingdoms*. Ought not we, therefore, to be the more afraid, who worship the one true and only God who has solemnly told us, “*That,*
“*He will not hold him guiltless, that taketh his*
“*Name in vain,* lest, (since wherever we turn our Eyes, we may see a plentiful and luxuriant crop of *Oaths* and *Perjuries*, and long since growing *White*, as it were, or ripe for the *Harvest*), lest, I say, that God, who is a most just Judge, should instantly thrust in the sharp Sickle of his Judgments, and entirely cut off so perfidious and prophane a Generation. We have long perceived, that, our most merciful Father is angry with us, and, that the infinite Patience of God, so often, so infinitely offended, and, if I may be allowed the Expression, so often triumphed over by our Sins, is turned into Fury. It is not easy to say, for what Sins principally, this is done, where all of them are extremely great and grievous. But, indeed, whoever would seriously reflect, (ever since God has more nearly begun to scourge us,) on those most crying Sins of *Oaths* and *Perjuries*, which we have been so far from bewailing and putting a Stop to, that, on the one Hand, an unbridled Licentiousness of swearing and blaspheming with Impunity; and, on the other,

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base *Hypocrisy* and *Perjury*, under the *Cloak* of *Religion*, seem rather immensely to have increased; I say, whoever seriously reflects on these, can scarcely hinder that *Saying* of the Prophet *Jeremiah* from coming often into his Mind, “*The Land mourneth because of Oaths.*”

Now, since Matters stand thus, let all of us, *Men, Fathers, and Brethren*, who are here present; and all other Persons, in what Place soever, who wish well to the public Peace of the Church and Kingdom, as well as to the private Peace of their own Minds and Consciences, be entreated, diligently, in the first Place, to guard against, and prevent the Contempt of the Name of God, and the hateful Crimes of *Perjury*, and *Breach of Faith*. Let us always avoid unnecessary Oaths; constantly refuse such as are unduly tendered, to us by others; faithfully fulfil those that are justly and duly taken by ourselves; and then, strenuously restrain, as much as lies in our Power, the unbridled Licentiousness of sinning taken in this respect by others: And, lastly, let us assiduously beseech Almighty God, that, being taught and admonished by his correcting Scourge, and humbled under his powerful Hand, we may fly to his Clemency and Pity; acknowledge his Justice, and implore his Favour, for the Remission of our Sins, the Amendment of our Lives,
and

and the *Salvation* of our *Souls*, by and through the *Merits* of our *Lord Jesus Christ*, To whom with the *Father* and the *Holy Ghost*, Three Persons and *One God*, be all *Dominion*, *Power*, and *Glory* for *Ever* and *Ever*. *Amen, Amen.*

The E.N.D.



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and the Salvation of our souls, by and through
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sons and One God, Honour, Power, and
Glory for ever and ever. Amen.



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